THIRD RPORT OF THE
JUDICIAL
ESTABLISHMENTS
PROCEDURE
& LAWS OF INDIA

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BOMBAY BRANCH
OF THE
ROYAL ASIATIC SOCIETY.
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THIRD REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

108716

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Presented to both Houses of Parliament by Command of Her Majesty.

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PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

FOR HER MAJESTY'S STATIONERY OFFICE.

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COMMISSION.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years "of King William the Fourth it was provided that Commissioners to be "appointed thereunder, and to be styled the Indian Law Commissioners, "should inquire into the Jurisdiction, Powers, and Rules of the existing Courts "of Justice and Police Establishments in the Territories in the Possession and "under the Government of the East India Company, and all existing Forms "of Judicial Procedure, and into the Nature and Operation of all Laws, "whether civil or criminal, written or customary, prevailing and in force in any "Part of the said Territories, and should from Time to Time make Reports, "in which they should fully set forth the Result of their Inquiries, and should "from Time to Time suggest such Alterations as might, in their Opinion, be "beneficially made in the said Courts of Justice and Police Establishments, "Forms of Judicial Procedure and Laws, due Regard being had to the Dis-"tinction of Castes, Difference of Religion, and the Manners and Opinions "prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to "Time appointed under the said Act have, in a Series of Reports, recommended "extensive Alterations in the Judicial Establishments, Judicial Procedure, and "Laws established and in force in India, and have set forth in detail the "Provisions which they have proposed to be established by Law for giving "effect to certain of their Recommendations, and such Reports have been "transmitted from Time to Time to the said Court of Directors; but on the "greater Part of such Reports and Recommendations no final Decision has "been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight; Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other matters in relation to the reform of the said Judicial Establishments, Judicial Procedure, and Laws as might, by or with the sanction of the Commissioners for the Affairs of India, be referred to us, have prepared and submitted to Your Majesty in our First Report a plan for the amalgamation of the Supreme and Sudder Courts at Calcutta, as well as a simple and uniform Code of Civil and Criminal Procedure applicable both to the High Court so formed and to all inferior Courts within the limits of its jurisdiction.

In the remarks we then made introductory to the plan which we recommended for the amalgamation of the Supreme and Sudder Courts at Calcutta, we intimated that the subsequent extension of the measure to the other Presidencies of India would be comparatively an easy task.

Since the submission of our First Report we have been instructed by the Commissioners for the Affairs of India to apply ourselves to the preparation of a similar Report for the Presidencies of Madras and Bombay. We are accordingly preparing such a Report; but as the Report which we have submitted does not embrace the North-western Provinces of the Presidency of Bengal, we now submit the plan we propose for those Provinces, in order to bring them under a system of judicature and procedure uniform, as far as the difference of circumstances will permit, with the system recommended by us for the Lower Provinces of the same Presidency.

There is at Agra, as at Calcutta, a Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut, but no Supreme Court. The Supreme Court at Calcutta, however, possesses the same jurisdiction over the North-western Provinces as it possesses over the Lower Provinces of the Bengal Presidency.

We propose to abolish the Sudder Court at Agra, and to establish a High Court exercising the powers and jurisdiction of that Sudder Court, as well as those which the Calcutta Supreme Court has with respect to the North-western Provinces.

The same majority of the Commissioners which agreed in recommending that the High Court at Calcutta should be constituted in the manner proposed in our First Report think that the High Court to be established at Agra should also be constituted in that manner, except only as regards the number of Judges.

It is recommended by that majority that the High Court at Agra shall never consist of less than four members, of whom one shall be appointed by the Crown, and the rest by the Governor General in Council; and that the Judges shall be selected from the same classes as in the case of the High Court of Calcutta.

We are of opinion it is desirable that the Judges of the High Court should not only be judges of appeal, but also judges of original jurisdiction. This object will be readily effected at Calcutta by the transfer to the High Court of the original jurisdiction exercised by the Supreme Court in the town of Calcutta in the manner we have recommended in our First Report. At Agra the Courts of original civil jurisdiction are those of the Judge and Principal Sudder Ameen of the district of Agra, and that of the Moonsiff of the town of Agra. We propose to give to the High Court original jurisdiction locally co-extensive with that of the Moonsiff of the town, to the exclusion, within the same limits, of the jurisdiction now exercised by the Judge and Principal Sudder Ameen, so that the High Court and the Court of the Moonsiff will be the only Courts of original jurisdiction, and the High Court the only Court of appellate juris-

diction within the local limits of the Moonsiff's jurisdiction. In like manner we propose to exclude, on the criminal side, the jurisdiction now exercised by the Session Judge of the district of Agra within the town of Agra, and to provide that all offences within the limits of the town, except those punishable upon summary conviction, shall be tried by the High Court.

The only other point to which we think it necessary to make special reference is that of trial by jury. We propose that all trials before the High Court in the exercise of its original criminal jurisdiction shall be by jury; but whereas we have recommended that at Calcutta the number of the jury shall never be less than nine, we propose, with advertence to the probable difficulty of procuring at Agra so large a number of jurors as nine, to apply there the rule we have suggested with respect to trials by jury in the Lower Provinces at other places than the presidency town, that is to say, that the jury shall consist of not less than three nor more than nine persons.

In all other respects the system of Courts and the Civil and Criminal Procedure we recommend for the North-western Provinces are the same as those we have recommended for the Lower Provinces of the Bengal Presidency.

For our views on various points, as well as for information in regard to the existing systems of Judicature and Procedure in the Presidency of Bengal, we beg to refer to the notes and appendices of our First Report, which we consider it unnecessary to add to our present Report.

High Court.

I.

There shall be one High Court of Judicature at Agra. Institution of the High Court.

II.

Such Court shall consist of not less than four Judges, of whom one shall be appointed by the Crown, and the remainder by the Governor General in Council; and one of such Judges shall be appointed Chief Justice by the Crown. Constitution of the High Court.

The Judge to be appointed by the Crown shall be selected from barristers of England and Ireland, and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor General in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years; or,

4th. Persons who have been vakeels for a period of ten years; or

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

III.

Every vacancy happening in the office of the Judge who shall have been appointed by the Crown shall be filled up by the Crown, and every vacancy in the office of any Judge appointed by the Governor General in Council shall be filled up by the Governor General in Council. Vacancies how to be filled up.

IV.

The Judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor General in Council to direct the suspension of any Judge of the High Court until the pleasure of the Crown be known. Judges to hold Office during pleasure of the Crown. Governor General in Council may suspend.

V.

Every Judge of the High Court, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:— Declaration on entering upon office.

> "I, *A.B.*, appointed a Judge of the High Court at Agra, do solemnly "declare that I will faithfully perform the duties of my office to the "best of my ability, knowledge, and judgment."

VI.

The High Court shall use a seal such as shall be prescribed by the Governor General in Council. Seal.

VII.

The High Court shall prepare and submit for the approval of the Governor General in Council, a statement of such establishment of ministerial officers as may be necessary for the due execution of all the powers and authorities committed to it, exhibiting in detail the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such further particulars as the Governor General in Council may require. When Ministerial officers.

such statement has been approved by the Governor General in Council, the High Court shall proceed to make the appointments to the several offices.

VIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the High Court;

The High Court shall have power to make all the general rules for the due exercise of the civil and criminal jurisdiction vested in that Court, and also to frame forms for every proceeding in the said Court for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Court; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are carried into effect, have received the sanction of the Governor General in Council.

IX.

In admitting advocates, vakeels, and attorneys;

The High Court shall be empowered to approve, admit, and enrol such and so many advocates as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and plead for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many vakeels as to the said High Court shall seem meet, who shall be and are hereby authorized to appear, plead, and act for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many attorneys-at-law as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and act for the suitors of the said High Court.

X.

In making rules for the qualifications, &c. of advocates, vakeels, and attorneys.

The High Court shall have power to make rules for the qualification and admission of proper persons to be advocates, vakeels, or attorneys-at-law of the said High Court, and shall be empowered to remove, on reasonable cause, the said advocates, vakeels, or attorneys-at-law; and no person or persons whatsoever but such advocates, vakeels, or attorneys-at-law shall be allowed to appear for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such advocates or vakeels shall be allowed to plead for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such vakeels or attorneys-at-law shall be allowed to act in any other respect than as herein-before mentioned, for any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction.

XI.

Appellate jurisdiction.

The High Court shall have all the appellate jurisdiction now exercised by the Sudder Dewanny Adawlut of Agra, and a new appellate jurisdiction from the Judges of the High Court exercising original jurisdiction, as herein-after provided.

XII.

High Court to superintend all Civil Courts.

The High Court shall have superintendence over all the Courts of civil judicature subject to its appellate jurisdiction, with power to call for returns, and to direct the transfer of any civil suit or appeal from any Court to any other Court of equal or superior jurisdiction.

XIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the subordinate Civil Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall

be used and observed in the said Courts; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Governor General in Council.

XIV.

The High Court shall have original civil jurisdiction locally co-extensive with that of the Moonsiff of Agra; provided that it shall be in the power of the Governor General in Council, from time to time, to extend the local limits of such jurisdiction as he shall think fit.

Local limits of original jurisdiction.

XV.

The High Court shall have within the territories subject to its appellate jurisdiction the like civil jurisdiction as that now possessed by the Supreme Court at Calcutta as a Court of Ecclesiastical Jurisdiction, and as a Court for the Relief of Insolvent Debtors.

Ecclesiastical and insolvency jurisdictions.

XVI.

The High Court shall have the like jurisdiction as that now possessed by the Supreme Court at Calcutta in suits againt the East India Company.

Jurisdiction in suits against the East India Company.

XVII.

The High Court, in the exercise of its original jurisdiction, shall be empowered to receive, try, and determine suits of every description, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall dwell, or carry on business, or work for gain, within the local limits of the ordinary original jurisdiction of the said Court, except that it shall not have any jurisdiction in cases in which the debt, or damage, or value of the property sued for, does not exceed five hundred rupees.

Original jurisdiction as to suits.

It has been proposed in our First Report that the jurisdiction of the High Court to be established at Calcutta shall extend to all causes except those in which the value of the matter in dispute does not exceed 100 rupees, and which fall within the jurisdiction of the Small Cause Court. The jurisdiction of the Small Cause Court extends to 500 rupees, and there is no appeal of right from its decisions. If our recommendations with respect to the pecuniary jurisdiction of the Mofussil Courts are adopted, the jurisdiction of the Moonsiff of Agra, in common with that of all other Moonsiffs, will be extended to 2,500 rupees, and there will be an appeal from his decisions to the High Court, except in cases of the most simple kind, in which the sum in dispute does not exceed 50 rupees. We accordingly propose that the concurrent jurisdiction of the High Court and of the Moonsiff at Agra shall commence at 500 rupees.

XVIII.

No suit in the High Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

Declaratory suit.

XIX.

The High Court shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

High Court not to entertain original suits already heard and determined.

XX.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of the High Court.

No person excepted from jurisdiction by reason of place of birth, or of descent.

XXI.

More than one Court of appellate or original jurisdiction constituted by Judges of the High Court may be sitting at the same time.

More than one Court may be sitting at the same time.

XXII.

The Chief Justice shall from time to time determine what and how many Judges of the Court, whether with or without the Chief Justice, shall constitute Courts of Appeal; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction.

Courts of appellate and original jurisdiction, how to be constituted.

XXIII.

Appeal from the High Court of original jurisdiction to the High Court in its appellate jurisdiction.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

XXIV.

An appeal shall lie to the High Court from the Moonsiff of Agra in all cases in which an appeal shall be allowed by the Code of Civil Procedure.

XXV.

Judges may be sent on special commission.

The Judges of the High Court may be sent into the Mofussil on special commission by the Governor General in Council.

Criminal Jurisdiction.

XXVI.

High Court to exercise powers of Sudder Nizamut Adawlut.

The High Court shall have all the jurisdiction now exercised by the Sudder Nizamut Adawlut of Agra as a Court of Appeal, and also as a Court for the hearing of cases referred by the Session Judges, and for the revision of cases tried by the criminal Courts

XXVII.

High Court to superintend subordinate criminal Courts.

The High Court shall have superintendence over all the Courts of criminal judicature subject to its appellate jurisdiction, and over all criminal Courts subordinate to such Courts, with power to call for returns, and to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

XXVIII.

Powers of the High Court in making rules of practice and framing forms for the subordinate criminal Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the criminal Courts subject to its superintendence, and also to frame forms for every proeeeding in the said Courts for which it shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided, that such rules and forms be not inconsistent with the provisions of any law in force; and shall, before they are issued, have received the sanction of the Governor General in Council.

XXIX.

Local limits of original jurisdiction.

The High Court shall have original criminal jurisdiction within the local limits of its original jurisdiction.

XXX.

Jurisdiction as to persons in Agra.

The High Court, in the exercise of its local original jurisdiction, shall be empowered to try all persons brought before it on charges preferred by the Advocate General of the Bengal Presidency, or by the Magistrate of Agra, or by any private person who shall have first obtained leave of the Court for that purpose.

XXXI.

As to persons within its general jurisdiction.

The High Court shall have original criminal jurisdiction over all persons residing within the limits of its general jurisdiction, and shall have authority to try, at its discretion, any persons brought before it on charges preferred by the Advocate General of the Bengal Presidency, or by any Magistrate, or other officer specially empowered by the Government to act in this behalf, or by any private person who shall have first obtained the leave of the Court for that purpose.

XXXII.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of the High Court.

No person excepted from jurisdiction by reason of place of birth or of descent.

XXXIII.

More than one Court of appellate or original jurisdiction, or for the hearing of cases referred by the Session Judges, or for the revision of cases called for by the High Court, may be sitting at the same time.

More than one Court may be sitting at the same time.

XXXIV.

Every Court for the hearing of cases referred by the Session Judges shall consist of not less than three Judges.

Courts for hearing referred cases.

XXXV.

The Chief Justice shall, from time to time, determine what and how many Judges, whether with or without the Chief Justice, shall from time to time constitute Courts of Appeal; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction.

Courts of appellate and original jurisdiction, &c., how to be constituted, and how many.

XXXVI.

There shall be no appeal to the High Court from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more Judges of the High Court. It shall, however, be at the discretion of the Court to reserve any point of law for the opinion of the High Court.

No appeal.

Court may reserve points of law.

XXXVII.

Provided, that on its being certified by the Advocate General of the Bengal Presidency, that in his judgment there is error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which have been decided by the said Court should be further considered, the High Court shall review the case, or such part of it as may be necessary, for the purpose of determing the question or questions raised by the certificate of the Advocate General.

High Court to review on certificate of the Advocate General.

XXXVIII.

The Judges of the High Court may be sent into the Mofussil on Special Commission by the Governor General in Council.

Judges may be sent on special commission.

Power of the Government to call for Records, &c.

XXXIX.

It shall be competent to the Government to call for records, returns, and statements from the High Court, or from any other civil or criminal Court, in such form and manner as it may deem proper.

Government may call for records, &c.

Civil Courts subordinate to the High Court.

I.

Grades of district judges.

There shall be three grades of Judges in each zillah or district:—

Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

II.

Their Courts, how to be denominated.

The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

III.

Their appointment, suspension, and removal.

The appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor General in Council shall, from to time, pass.

IV.

Declaration on entering upon office.

Each Civil Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:

"I, *A.B.*, appointed of the Court of
"do solemnly declare that I will faithfully perform the duties of my
"office to the best of my ability, knowledge, and judgment."

V.

Seal.

Each Civil Court is to use a seal, such as shall be prescribed by the Government.

VI.

Ministerial officers.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Zillah authorities as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to the several Civil Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council, the Judges of the Civil Courts shall make the appointments to the several offices of their respective establishments.

VII.

Civil Courts have cognizance of all suits unless specially barred,

The Civil Courts shall be empowered to take cognizance of all suits and complaints of a civil nature, with the exception of suits their cognizance of which is barred by any Act of Parliament, or by any regulation of the Bengal Code, or by any act of the Council of India.

VIII.

unless already heard and determined.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

IX.

Government officers who are subject to the Civil Courts for official acts.

The Civil Courts are empowered to take cognizance of suits against collectors of the revenue and their assistants and native officers, salt agents and their assistants and native officers concerned in the manufacture of salt, opium agents and their assistants and native officers concerned in the manufacture

of opium, collectors of the customs and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, for acts done in their official capacity.

X.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

No Person excepted from jurisdiction by reason of place of birth or of descent.

XI.

The Moonsiffs shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts under the following pecuniary limitations; provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits to which their respective jurisdictions may extend:

Moonsiffs, their jurisdiction.

For money or other personal property not exceeding in amount or value the sum of two thousand five hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action; but any plaintiff having cause of action for debt or damages above the sum of two thousand five hundred rupees may abandon the excess, and thereupon he shall, on proving his case, have a decree for an amount not exceeding such sum, and such decree shall be in full discharge of all demands in respect of such cause of action:

Pecuniary limitation.

For the property or possession of land or other real property, the computed value of which shall not exceed two thousand five hundred rupees.

XII.

If a defendant claim to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the Moonsiff, the Moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum which upon inquiry shall appear to be due to either party.

Jurisdiction in cases of set-off.

XIII.

The Principal Sudder Ameen shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts in which the amount claimed or the computed value of the property may exceed the sum of two thousand five hundred rupees, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits of the district over which his jurisdiction may extend.

Principal Sudder Ameens, their jurisdiction.

XIV.

The Principal Sudder Ameen shall further exercise the same powers as the Moonsiff within the limits of the territorial division now included in the local jurisdiction of the Moonsiff fixed at the sudder or head station of the district.

To exercise the powers of Moonsiff at the Sudder station of the district.

Under this rule the Principal Sudder Ameen of the district of Agra will be ex officio Moonsiff of the town of Agra. The terms of the rule may require to be modified to meet the case of a district in which there may be more than one Principal Sudder Amen, or of a Sudder station at which there may be more than one Moonsiff. We think it expedient to leave these details to be arranged by the Legislature of India. The rule, as explained by the remarks we have made with respect to it in our First Report, indicate the course which, in our opinion, should be followed in order to render the services of the Principal Sudder Ameen available in the most efficient way, on the introduction of the system which we have recommended.

XV.

The Zillah Judge shall have concurrent original jurisdiction with that of the Principal Sudder Ameen in regard to all suits above the value of two thousand five hundred rupees; provided, however, it shall be competent to a Zillah Judge, on cause shown, to receive, try, and determine a suit within the pecuniary limitation assigned to the Moonsiff, or to direct the transfer of any suit from any Court to any other Court of equal or superior jurisdiction in his district.

Zillah Judge, original jurisdiction.

XVI.

Moonsiff's jurisdiction excluded when there is no specification of value.

The Zillah Judge and the Principal Sudder Ameen shall have concurrent jurisdiction, and the Moonsiff shall not have jurisdiction, in cases in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

XVII.

Suits for real property situate within different jurisdictions of the same Zillah.

A suit for land or other real property situate within the limits of a single Zillah, but within the jurisdiction of different Moonsiffs' Courts, may, with the previous sanction of the Judge of such Zillah, be brought in any Court within the limits of which any portion of such property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court.

XVIII.

Suits for real property situate in different Zillahs.

In like manner, if the property be situate within the limits of different Zillah Courts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property in suit is situate, but in such case the Court in which the suit is brought shall apply to the High Court for authority to proceed with the same; and if the suit is brought in the Court of the Principal Sudder Ameen or Moonsiff, the application shall be submitted, through the Zillah Judge, to whom such Principal Sudder Ameen or Moonsiff is subordinate.

XIX.

Suits for real property situate partly within the jurisdiction of the High Court, and partly in another jurisdiction.

If the property be situate partly within the limits of the ordinary original jurisdiction of the High Court, and partly within those of any other Court or Courts, the suit may be brought either in the High Court or in any other Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property is situate. If the suit is brought in any other Court than the High Court, application for authority to proceed with the same shall be made to the High Court, as directed in the last preceding article.

XX.

Declaratory suit.

No suit in any of the Civil Courts shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

XXI.

By whom judicial decisions may be revised.

The judicial decisions of the Courts of Justice shall be subject to revision only by the constituted Courts of appellate jurisdiction, or by themselves under the rules of the code of procedure applicable to reviews of judgment.

LAW TO BE ADMINISTERED.

The Civil Courts of the North-western Provinces shall (until otherwise provided) be guided in their decisions by the laws and regulations in force at the time of the passing of this Act at the place where such Court is situate, except in so far as may be inconsistent with anything herein contained.

Proposed Code of Procedure for the Courts of Civil Judicature in the North-western Provinces of the Presidency of Bengal.

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CHAPTER I.

Preliminary Rules.

I.

No institution stamp, fee, or deposit.

No stamp duty, fee, or deposit shall be required on the institution of any civil suit, or on the entry of any appeal from the decision or order of any Civil Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Civil Court, except such fees or charges as may be set in tables to be prepared as herein-after provided.

II.

Tables of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Civil Courts comprised in any zillah by the Judge of the zillah, under the direction of the High Court, and for the High Court by the Judges thereof. And a copy of the table of fees and charges so prepared, which may be applicable to any Civil Court, shall, after the same shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him, than such fees or charges as may be set forth in such table.

III.

Parties may appear in person or by Attorney.

All applications to any Civil Court, and all appearances of parties in any Civil Court, except when otherwise specially provided, may be made by the

party in person, or through an Attorney or Vakeel duly authorized to act on his behalf. The authority shall in all cases be in writing, and shall be filed with the proper officer of the Court. When so filed, it shall be considered to be in full force until revoked, and the revocation shall be intimated in writing to the officer; and all notices given to, or processes served on, the Attorney or Vakéel of either party, or left at the office or ordinary residence of such Attorney or Vakeel, relative to the suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the Attorney or Vakeel represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

IV.

Party appearing in person to enter his name and address in a book.

In all cases in which a party shall appear in person, and the cause shall not be decided on the day of his appearance, he shall enter his name and place of abode in a book to be kept for that purpose by the proper officer of the Court, if his place of abode shall be within the radius of eight miles from the Court House; otherwise, he shall enter in the said book the name and place of abode of some person residing within such distance of the Court House, on whom he may wish that all notices or process in the cause should be served on his behalf. And all notices or process relative to the suit which may thereafter be left at the place so entered in the register, shall be deemed good service on the party, and shall be as effectual for purposes relative to the suit as if the same had been served on the party himself in person, unless the Court shall otherwise direct. If no such entry as aforesaid shall be made in the said register, the fixing up of such notices or process in some conspicuous place in the office of the Clerk or other proper officer of the Court, and also in some conspicuous place in the Court House, shall in like manner be deemed to be good service, and shall be as effectual for all purposes relative to the suit as if such entry had been made, and the notice or process had been left at the place so entered in the register.

V.

Native officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them;

When a native officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending it in person, he may authorize any member of his family or any other person to conduct and manage the suit or the defence, as the case may be, in his stead. The authority shall in all cases be in writing, and shall be signed by the native officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed with the proper officer of the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the native officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

VI.

Who may appear personally, or appoint an Attorney or Vakeel.

Any person who may be authorized, as in the last preceding Article mentioned, by a native officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the native officer or soldier could do if present; or he may appoint an Attorney or Vakeel of the Court to prosecute or defend the suit on behalf of such native officer or soldier. And all notices or process relative to the suit which may be served upon any person who shall be so authorized as aforesaid by a native officer or soldier, or upon any Attorney or Vakeel who shall be appointed as aforesaid by such person to act for or on behalf of such native officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on an Attorney or Vakeel directly appointed by him.

CHAPTER II.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

VII.

All suits shall be commenced by a summons to the Defendant. **Suits to commence with summons.**

VIII.

The application for a summons shall be made to the Clerk or other proper officer of the Court by the party in person, or through one of the Attorneys or Vakeels of the Court, duly authorized to act on his behalf, by an instrument in writing, which shall be delivered to the officer at the time of making the application. **Summons how to be applied for.**

IX.

The application shall be accompanied by the following particulars, distinctly written in the language in ordinary use in proceedings before the Court, viz.— **Particulars given with application.**

1. The name, description, and place of abode of the Plaintiff.

2. The name, description, and place of abode of the Defendant, so far as they can be ascertained.

3. The relief sought for, the subject of the claim, the cause of action, and when it accrued. The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of Company's rupees due on (a bond, tumussook, hoondee, or bill of exchange, as the case may be), for the sum of Company's rupees , bearing date the day of , and payable on the day of .

If the suit be for the price of goods sold:—Payment of Company's rupees on account of maunds of (rice, indigo, sugar, or as the case may be), sold on the day of , and the price of which became payable on the day of .

If the suit be for damages for slanderous words:—Payment of Company's rupees , on account of injury done to the Plaintiff, by calling him on the day of , a (thug, or thief, or as the case may be), or by causing to be published on the day of , in a newspaper entitled the , (or otherwise as the case may be), the following slanderous words concerning him (stating them at length, as the case may be).

4. When the claim is for any property other than money, its estimated value in Company's rupees. The following are instances:

If the suit be for a Zemindary, or share in a Zemindary:—Possession of a Zemindary, or of anas gundas share in a Zemindary, called situate in the zillah of , the Sudder Jummah of which is Company's rupees , and estimated value Company's rupees , of which the Plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so,) on the day of ; or to which the Plaintiff became entitled by inheritance from , on or about the day of ,

5. When the claim is for a declaration of right, or the fulfilment of a duty in which the Plaintiff is interested, or that the Defendant be restrained from the committal of any breach of a contract or other injury to the Plaintiff, or for anything not susceptible of pecuniary valuation, it shall not be necessary to specify the estimated value of any property or any sum of money by way of damages.

6. In all suits by or against the Government, or one of its officers in his official capacity, or the East India Company, or any other Corporation, or any Company authorized to sue and be sued in the name of an officer or trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or "The East India Company," or name of the Corporation or name or names of the officer or trustees of the Company, shall

be inserted in Nos. 1 and 2, instead of the name and description of the Plaintiff or Defendant. But in all other cases it shall be necessary to specify the names of all the parties.

X.

Application to be rejected if the claim is beyond the jurisdiction of the Court.

If the amount or estimated value of the claim, as stated by the Plaintiff, be beyond the jurisdiction of the Court the officer shall refuse to receive the application.

XI.

Reference to be made to the Judge in a suit for property in different jurisdictions.

If the suit be for land or other real property, situate partly within the jurisdiction of the Court, and partly within the jurisdiction of some other Court or Courts, the officer shall submit the application for the order of the Judge.

XII.

When the claim is within the Court's jurisdiction, the officer shall enter the particulars in a Register.

If the amount or estimated value of the claim, as stated by the Plaintiff, be within the jurisdiction of the Court, the above particulars shall be entered by the officer in a book to be kept for the purpose, and called the Register of Civil Suits, and the entries shall be numbered in every year according to the order in which the application shall be made.

XIII.

Form of the Register.

The Register shall be kept in the form contained in the Schedule (A.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all Courts of justice in India.

XIV.

Document of debt should be shown to the officer.

When the Plaintiff's demand is founded on any instrument in writing, as constituting or acknowledging the demand, such as a bond, tumossook, bill of exchange, hoondee, ikrar, or acknowledgment, the same shall be produced and shown to the officer at the time of applying for the summons, and a copy of the instrument shall be delivered to him at the same time, for the purpose of being served with the summons on the Defendant; and if such instrument shall not be produced it shall not be received in evidence on behalf of the Plaintiff at the hearing or trial of the cause, without the sanction of the Court. When there is more than one Defendant, a copy of the instrument for each defendant shall be delivered to the officer; unless all the Defendants are members of one joint and undivided Hindoo family, in which case one copy of the instrument will be sufficient.

XV.

Summons may be for settlement of issues, or final disposal.

The person applying to the officer for a summons shall state at the time of his application, whether he requires a summons for the first hearing and settlement of issues or for the final disposal of the cause.

Of Summoning the Defendant.

XVI.

Form of Summons.

The summons shall be in the following form, or to the following effect:—

No. of Suit

In the Court of the of

holden at

Plaintiff.

Defendant.

[Name, description, and address of Defendant.]

You are hereby summoned to appear at this Court on the day of at in the forenoon, to answer [name, description, and address of Plaintiff,] to a claim for [here state the particulars, as in the Register referred to in Article XIII.]

Dated the day of

(Signature.)

Costs of summons and service

This summons must be served on or before the day of

N.B.—See notice at back.

XVII.

Special directions shall be endorsed on the summons, which, if the application be for a summons for the first hearing, and settlement of issues, shall be as follows:— Directions to be endorsed on summons to settle issues.

1. If you admit the Plaintiff's claim, you must deliver your admission in writing, under your signature, to the officer of the Court, together with the costs marked on the summons, five clear days before the day for appearing to this summons; but you may enter your admission at any time on or before the day of appearing, subject to the payment of further costs.

2. If you admit any part of the Plaintiff's demand, and pay to the officer of the Court the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless the Plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

3. If you deny the Plaintiff's claim, or any part of it, you must appear on the day fixed in the summons, and be prepared to answer all questions that may be put to you by the Judge, relating to the Plaintiff's demand, and your liability thereto, and to state any objections which you may have to make to the same.

4. You must bring all documents or instruments in writing of any description, which you may wish to produce in explanation, or as evidence of your defence to the suit, or of any counter-claim against the Plaintiff which you may desire to make a set-off to his demand against you; and, in particular, you must bring with you all or any instruments in writing or things which may be specified in any notice to produce that accompanies this summons, or that may be served on you within a reasonable time before your appearance thereto.

5. If you do not appear in person, you must employ one of the Attorneys or Vakeels of the Court to appear in your stead, and must furnish him with the documents, instruments, or things above referred to, and with any information that you possess in regard to the Plaintiff's demand, and your own defence thereto, so as to enable him to answer for you in all respects as you could do yourself if interrogated in person. And if you fail in any of these matters, and your Attorney or Vakeel is unable to answer any questions that may be put to him on your behalf by the Judge, and the Judge shall be of opinion that the documents, instruments, or things referred to, are such as you ought to have produced, or that the questions put to your Attorney or Vakeel are such as you ought to be able, or are likely to be able, to answer, if interrogated in person, the hearing of the case will be postponed, a notice will be given to your Attorney or Vakeel requiring your personal appearance, and the production of the documents, instruments, or things referred to, and you will have to pay all the costs; and if you should fail to appear in obedience to such notice, judgment will be given against you by default.

6. If you do not appear on the day fixed in the summons, either in person or by an Attorney or Vakeel of the Court, judgment will be given against you by default.

XVIII.

If the application be for a summons finally to dispose of the case, this further direction shall be endorsed thereon:— Further direction on summons for final disposal of the case.

7. You are required to take special notice, that the day fixed in the summons for your appearing is appointed for the final disposal of the case, and that you must be prepared to produce all your witnesses. If you fail to do so, and the Judge shall think proper to postpone the cause to another day, in consequence of your default, you will have to pay all the costs that may be incurred by the postponement. If your witnesses will not come at your request, you should apply to the officer of the Court, either in person or by Attorney or Vakeel, not later than the day of , for subpœnas to compel their attendance.

XIX.

If the summons be to settle the issues, the day for the appearance of the Defendant shall not be less than ten days, exclusive of the day of service Time for appearance on a summons to settle issues.

and day of appearance, above the time that may be necessary for the service of the writ, such time to be computed at the rate of one day for every eight miles in a straight line that the residence of the Defendant may be distant from the Court.

XX.

Time for appearance on a summons for final disposal of the case.

If the summons be for a final disposal of the case, the day to be fixed for the appearance of the Defendant shall not be less than fifteen days (exclusive as aforesaid) above the time that may be necessary for the service of the writ, such time to be computed in the manner above mentioned.

Service of Summons on the Defendant.

XXI.

Summons shall be served by the officer.

The writ of summons shall be delivered to the Bailiff or other proper officer of the Court, to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

XXII.

Latest day of service to be written at foot of the summons.

A day on or before which the summons must be served shall be written at the foot of the summons before delivery to the officer, and the day so to be written shall be always such as to allow the Defendant the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXIII.

How service shall be made.

Service of the summons shall be made by exhibiting the original under the seal of the Court, and delivering or tendering a copy thereof and of the endorsements thereon, together with any notice to produce, and copies of any documents or instruments in writing that may have been delivered to the Clerk or proper officer of the Court, at the time of applying for the summons, for the purpose of being served therewith.

XXIV.

When there are several Defendants.

When there are several Defendants, service of the summons shall be made on each Defendant, unless all the Defendants are members of one joint and undivided Hindoo family; in which case service on any one of the Defendants shall be sufficient, if made at the dwelling house of the joint and undivided family.

XXV.

Service to be on Defendant in person, or on his accredited agent.

Whenever it may be practicable, the service shall in all cases be on the Defendant in person, unless he have an accredited agent, empowered to accept the service; in which case service on such agent shall be sufficient.

XXVI.

Who may be an agent for this purpose.

Any Attorney or Vakeel of the Court, or any other person residing within its local jurisdiction, may be appointed an accredited agent to receive the services of summonses and all other judicial process. The appointment shall always be in writing, and shall be filed with the Clerk or other proper officer of the Court to which the agent is accredited, and shall be considered to be in full force until it shall be revoked, and such revocation be recorded with the proper officer of the Court.

XXVII.

Accredited agents of Government and the East India Company.

The Vakeel of Government in the High Court shall be accounted the accredited agent of the Government and of the East India Company for the purpose of receiving services of summonses, and all other judicial process against the Government or the East India Company that may be issued out of the said High Court, and the Government Pleader in all other Courts shall in like manner be accounted the accredited agent of the Government for the purpose of receiving sevices of summonses and all other judicial process against the Government, issuing out of the Court in which he may be the Pleader of Government.

XXVIII.

When the Defendant cannot be found, and has no accredited agent empowered to accept the service, it may be made on any adult member of his family residing with him.

If Defendant cannot be found, service may be made on a member of his family.

XXIX.

In all cases where the summons is served on the Defendant personally, or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service to be endorsed on the original summons.

The person served is to be required to endorse the summons.

XXX.

When the Defendant cannot be found, and there is no agent or other person empowered to accept the service, nor any member of his family on whom the same can be served, the serving officer shall fix the copy of the summons with its endorsement, and accompanying notice and copies of documents, if any be annexed thereto, on the outer door of the Defendant's dwelling house; and if he shall have no dwelling house in the place, the serving officer shall return the summons to the Court from whence it issued with an endorsement thereon that he has been unable to serve it.

If the summons cannot be served, it is to be returned with an endorsement of non-service.

XXXI.

The serving officer shall in all cases in which the summons has been served, endorse on the original summons the time and the manner when and how it was served.

If served, time and manner of service to be endorsed.

XXXII.

In all cases in which a summons shall be returned to the Court without having been served on the Defendant, the Plaintiff shall be at liberty to apply to the Court for an order to substitute some other mode of serving the summons for service in the manner above specified; and if it shall appear to the Court that there is reasonable ground for believing that the Defendant is keeping out of the way of its officer, for the purpose of avoiding the service of the summons, it shall pass an order directing that the summons may be served by fixing up copies thereof, with its endorsement and accompanying notice and copies of documents, if any be annexed thereto, upon some conspicuous place in the Court House and also upon the door of the house in which the Defendant shall have last resided if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

If the summons be returned unserved, the Plaintiff may apply to the Court to substitute service.

XXXIII.

Whenever service shall be substituted by order of the Court, by virtue of the power contained in the last article, the time for the appearance of the Defendant shall be enlarged, so as to allow him the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

When service is substituted, the time for appearance is to be enlarged.

XXXIV.

If the Defendant be resident within the jurisdiction of any other Court than that in which the suit may be instituted, and has no accredited agent empowered to accept the service, the summons shall be transmitted by the Clerk or proper officer of the Court to the Clerk or proper officer of the Court within whose jurisdiction the Defendant may reside, with such enlargement of the time for appearance as the case may require. And the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the Bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

How the summons is to be served when the Defendant is out of the jurisdiction.

XXXV.

If the Defendant be resident at some place out of the territories of the East India Company, and have no agent empowered to accept the service, and the

How it is to be served when he is out of the terri-

tories of the East India Company.

suit be for landed or other real property, the summons may be served on any person in charge of the landed or other real property to which the suit may relate, and the service shall be as effectual for all purposes of the suit as if the person had been duly empowered to accept it. If there shall be no person in charge of the landed or other real property to which the suit relates, on whom the summons can be served, or if the suit shall not relate to landed or other real property, but the Defendant is nevertheless subject to the jurisdiction of the Court by reason of the cause of action having arisen within the limits of its jurisdiction, a copy of the summons and of the endorsements thereon, together with any notice to produce, and any copies of any documents or instruments in writing that may have been delivered to the Clerk or other proper officer of the Court, at the time of applying for the summons for the purpose of being served therewith, shall be addressed to the Defendant at the place where he may reside, and forwarded to him by post: Provided that in all cases in which a Defendant is resident at some place out of the territories of the East India Company, the time for the appearance of the Defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is holden and the place where the Defendant resides; and provided also, that if on the day fixed for the hearing of the cause, or on any other day subsequent thereto on which the cause may be called on, the Defendant shall not appear in person, or by Attorney or Vakeel, the Plaintiff shall apply to the Judge, and it shall be lawful for the Judge to direct that the Plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to such Judge may seem meet; provided always, that the Plaintiff shall prove his case to the satisfaction of the Judge, and the making such proof shall be a condition precedent to his obtaining judgment.

XXXVI.

How native officers and soldiers are to be served.

When the defendant is a native officer or soldier in the service of the Government, a copy of the summons and of the endorsements thereon, together with any notice to produce and any copies of any documents or instruments in writing that may have been delivered to the Clerk or other proper officer of the Court for the purpose of being served therewith, shall be transmitted by the Judge to the commanding officer of the corps to which the native officer or soldier shall belong, for the purpose of being served on such native officer or soldier. The commanding officer, after causing the summons and its accompanying notices and copies of documents to be served on the party to whom it is addressed if practicable, shall return the summons to the Judge, with the written acknowledgment of the party endorsed thereon. If from any cause the summons cannot be served upon the native officer or soldier to whom it is addressed, it shall be returned by the commanding officer to the Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the summons to be duly communicated to the native officer or soldier, or shall adopt such other measures for that purpose as, on a consideration of the circumstances of each case, shall appear to be proper.

How privileged Persons are to be summoned.

XXXVII.

Substitutes for the summons in the case of privileged persons.

Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter, roobekaree, or other appropriate proceeding under the seal of the Court, when the person whose presence is required is of a rank or class in society which entitles him to such mark of consideration; and in such cases the letter or other proceeding shall be treated in all respects as a summons, and shall be accompanied with a copy of the directions which would ordinarily be endorsed on the summons, and with any notice and copies of any other documents which would have been delivered therewith, if a summons had been issued for the appearance of the party.

XXXVIII.

List of privileged persons to be kept by the officer of Court.

A list of the persons (if any) residing within the limit of the Court's jurisdiction, who are entitled to the mark of consideration mentioned in the last article, shall be kept in the office of the Clerk or other proper officer of the Court, and any application for a summons against a person whose name is entered in the said list, shall be referred by the officer to the Judge for his order before the summons shall be issued to the Defendant.

XXXIX.

Service how to be made on privileged persons.

When a letter or other proceeding is sent to a party on account of his being of a class or rank of society that entitles him to that distinction, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner that the Court may deem sufficient; unless the party shall have an accredited agent empowered to accept service of judicial process; in which case delivery to such agent shall be sufficient service. When the letter is transmitted through the post-office, or by special messenger, proof that it was duly posted, or was delivered to the messenger, shall be sufficient proof of its due service, in the absence of evidence to the contrary.

How Persons not before the Court may be made Parties to a Suit.

XL.

In certain cases of inheritance, a proclamation for claimants to be issued at the same time as the summons to the Defendant.

In every suit concerning the succession of right of inheritance to a zemindary, talook, land, house, or other real property, to which there may be more persons than one who by the Hindoo or Mahomedan law (regard being had to the religion of the claimants) would be entitled to a portion of the estate, there shall be issued, at the same time with the summons to the particular Defendant or Defendants, and in addition thereto, a proclamation setting forth the names of the parties, the nature of the suit, the day fixed for the hearing of the cause, and whether it have been fixed for the first hearing and settlement of issues, or for final disposal, and calling on all persons having any claim to any share or interest in the property, to appear on the said day, either in person or by an Attorney or Vakeel of the Court, and be prepared to state their claims to the Court, and to support them by proper evidence.

XLI.

Proclamation how to be published.

The proclamation shall be read aloud by the officer employed to serve the summons on some public place, within the limits of the zemindary, talook, land, or other real property concerning which the suit may be brought, and copies thereof shall be fixed up in some conspicuous part of the Court House, and on the outer door of the family dwelling house of the person the right of succession or inheritance to whose property is in question, or of the house in which he may have last resided. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

XLII.

Proclamation may be issued in any suit by order of the Court.

If in any suit it shall appear to the Court at any hearing of the cause, that all the persons who may be entitled to some share or interest in the property in dispute, have not been made parties to the suit, it shall be competent to the Court to adjourn the hearing of the cause to a future day to be fixed, and to direct a proclamation to be issued calling upon all persons having any claim to any share or interest in the property to appear on the day so to be fixed, and be prepared to state their claims to the Court, and to support them by proper evidence. If the suit shall relate to the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the proclamation shall be published or made known in the manner prescribed in the last preceding article. If the suit shall relate to any other matter or thing, a copy of the proclamation shall be fixed up in some conspicuous part of the Court House, and it shall also be competent to the Judge to direct that the pro-

clamation shall be published or made known in such or other manner as he may think proper. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall in all cases be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

XLIII.

If any claimant appear he is to be treated as a party to the suit.

If any claimant shall appear on the day fixed in any proclamation issued under the provisions of Article XL. or of Article XLII., the Court shall investigate his claim and pronounce a decision thereon, in the same way as if he had been made originally a party to the suit.

Of Suits against the Government and its Officers, and the East India Company.

XLIV.

If the suit be against the Government or its officers, the application for a summons is to be referred to the Judge.

If the suit be against the Government, or against any of its officers for acts which the Plaintiff at the time of applying for the summons alleges to have been done in an official capacity, the application for the summons shall be referred by the officer to the Judge for his order before any summons shall be issued to the Defendant.

XLV.

In cases where the Civil Courts have no direct jurisdiction against the officers of Government, the applicant is to be referred to the Government.

If it shall appear to the Judge, after examining the applicant, that the act complained of was done pursuant to a special order originating with the Government, or with the Board of Revenue, and that the officer by whom the act was done is not liable to be sued for it, the Judge shall direct the person who may have made the application for the summons to apply in the first place to the Government by petition, stating wherein he considers himself injured under the Regulations of the Bengal Code, or the Acts of the Council of India, and praying that the Government will order the Court of Civil Judicature in which the cause may be cognizable, to try the contested point or matters by the Regulations or Acts. If the Government shall deem proper to grant the prayer of such petition, and the plaintiff shall file an order to the above effect with the Clerk or proper officer of the Court; or if a Plaintiff shall in the first instance, with his application for a summons in a case of the aforesaid description, produce an order from the Government to the effect aforesaid, and it shall appear to the Judge that the case is within his jurisdiction and cognizable under the order, he shall direct the summons to be issued to the officer by whom the act complained of may have been done, in the same way as is herein-before prescribed for the issuing of summonses to private individuals; and in no case shall a summons be issued to any Defendant in a case of the nature aforesaid without an order to the effect aforesaid.

XLVI.

In cases where the Civil Courts have direct jurisdiction against the officers of the Government, the Judge is to refer to the Board of Revenue.

If it shall appear that the act complained of was done without any order of the Government, or of the Board of Revenue, and that the act complained of is one for which the officer by whom it was done is declared amenable under the Regulations of the Bengal Code or the Acts of the Council of India, the Judge shall transmit the particulars of the claim, as set forth in the Register referred to in Article XIII., to the Board of Revenue, together with copies of any documents or instruments in writing that may have been delivered to the clerk or proper officer of the Court at the time of applying for the summons, for the purpose of being served therewith.

XLVII.

How the Board of Revenue is to proceed in cases referred to it.

The Board of Revenue, after making due inquiries on the subject, shall determine whether the party complaining is entitled to redress directly from Government, or whether he shall be left to prosecute the case in the regular course of law; and if they shall be of opinion that the party should be left to prosecute the case in the regular course of law, they shall inform the Judge by whom the case may have been referred to them of their determination to that effect, and also whether the case is to be defended by the public officer as a

suit against the Government, or by the person affected by the complaint in his individual capacity.

XLVIII.

When the summons is to be issued.

At the expiration of days from the transmission, or at any earlier period when the Judge may receive intimation from the Board of Revenue that it has been decided that the party complaining shall be left to prosecute his case in the regular course of law, the Judge shall direct a summons to be issued to the officer whose act has been complained of, in the same manner as is herein-before prescribed for the issuing of summonses to private individuals.

The blank in this article is left to be filled up by the local government.

XLIX.

Suits against the East India Company.

If the suit be against the East India Company, the summons shall be served on the Government Vakeel in the High Court, who shall appear for the said Company on the day therein mentioned, to answer on their behalf to the suit of the Plaintiff. And if the said Vakeel shall appear on the day mentioned in the summons, and answer to the suit of the Plaintiff, or if he shall not appear on the said day, or on any subsequent day on which his appearance may be required during the progress of the suit, or if he shall so appear, but shall refuse to be unable to answer any question that may be put to him by the Court relative to the suit, the procedure shall be the same in all respects as is herein-after provided for suits against individual parties, or as near thereto as the circumstances of the case will admit.

Of Arrest before Judgment.

L.

When Defendant is about to leave the jurisdiction Plaintiff may apply that security be taken for his appearance.

If in any suit the Defendant, with intent to avoid or delay the Plaintiff, is about to leave the jurisdiction, the Plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court to demand that security be taken for the appearance of the Defendant, to answer any judgment that may be passed against him in the suit.

LI.

How the Court is to proceed on such application.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the Defendant is about to leave its jurisdiction with the intent of avoiding or delaying the Plaintiff, it shall issue a warrant to the proper officer, enjoining him to bring the Defendant before the Court, that he may give good and sufficient bail for his appearance at any time when called upon while the suit is pending, and until execution of any decree that may be passed against him in the suit; the surety or sureties undertaking, in default of such appearance, to pay, to an extent to be fixed by the Judge and specified in the warrant, any sum of money that may be adjudged against him in the suit, with costs.

LII.

Sureties may apply to be relieved from their engagements.

The sureties for the personal appearance of the Defendant may at any time apply to the Court to be relieved from their engagements as sureties, whereupon the Court shall issue its warrant directing that the Defendant be brought before it. On the appearance of the Defendant to such warrant, or on his voluntary surrender, the Judge shall direct the engagement of the sureties to be cancelled, and shall call upon the Defendant to give fresh security, and in default thereof shall commit him to custody.

LIII.

Deposit in lieu of bail.

Should a Defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit, and forthwith discharge the Defendant.

LIV.

Defendant to be committed to custody if he cannot give security.

In the event of the Defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decree shall have been passed.

LV.

When the Defendant is about to leave the country the application to be made to the High Court.

If in any suit the Defendant is about to leave the jurisdiction of the High Court with intent to remain absent so long that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant, the Plaintiff may make an application to the High Court, or to any Judge or Judges thereof, to the effect and in the manner aforesaid, and the procedure shall be in all respects the same as herein-before provided, except that the security for the appearance of the Defendant shall be for his appearance in the Court, whatever it may be, in which the suit is pending.

Of Sequestration before Judgement.

LVI.

In certain cases Plaintiff may apply for a sequestration of Defendant's property.

If the Defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, it shall be lawful for the Court, on the application of the Plaintiff in manner aforesaid, either at the institution of the suit or at any time thereafter until final judgment, to call upon the Defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, when required; and on his failing to give such security, to direct that any property, real or personal, belonging to the Defendant, or any debts due to him, or any money standing in his name or to his account and in deposit in any Court of justice, or any office of Government, or at his credit in any bank, or any interest or dividends payable or thereafter to become payable on any Government paper or shares in the capital or joint stock of any banking, railway, or other public company or corporation, standing in his name, or such a portion of such property, debts, or money as may be sufficient to fulfil the decree, shall be attached, and held in sequestration until the further order of the Court.

LVII.

Application, how to be made.

The application shall be accompanied with the following particulars distinctly written in the language in use in proceedings before the Court, viz., the nature and amount of the claim, the property required to be sequestrated, and the supposed value of each article or item thereof; and the Plaintiff shall, at the time of making the application, declare that the claim is a just one, and that the Defendant is about to dispose of or remove his property in manner aforesaid.

LVIII.

Defendant may be called on for security.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the Defendant intends to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, and if the Plaintiff shall in person or by his agent enter into a bond rendering himself liable in such sum as may be judged adequate for all injury arising from the sequestration, in the event of his demand being disallowed, either wholly or in part, the Court shall thereupon issue a warrant to the proper officer commanding him to require security from the Defendant, in such sum as may be specified in the order, to produce and place at the Court's disposal, when required, the said property, or a portion thereof sufficient to fulfil the decree.

LIX.

If security is not provided property may be sequestrated.

If such security is not furnished within the time specified in the order, the Court shall direct that the property, debts, or money mentioned in the particulars which accompanied the Plaintiff's application, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached, and kept under sequestration until further order.

LX.

The process for requiring security and for attachment and sequestration, when the property shall consist of goods and chattels, or other personal estate and effects, may be issued successively or simultaneously, as the Court shall think proper.

Process for taking security and for sequestration may be simultaneous.

LXI.

The attachment and sequestration shall be made, according to the respective natures of the property to be attached and sequestrated, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money.

How the sequestration is to be made.

LXII.

In all cases of sequestration before judgment, the Court which passed the the order for the sequestration shall at any time remove the same, on the Defendant's furnishing security as above required, together with security for the costs of the sequestration.

Sequestration may be removed when security is furnished.

LXIII.

If, on the trial of the suit, it shall be discovered that the sequestration was applied for on insufficient grounds, or if the Plaintiff's claim is disallowed, either wholly or in part, the Court shall (unless the Defendant shall in preference seek redress by a civil action for damages) award against the Plaintiff in its decree the whole of the amount specified in his penalty bond, or such part thereof as it may deem a reasonable compensation to the Defendant for the expense or injury occasioned to him by the Plaintiff.

Compensation for needless sequestration.

LXIV.

Sequestrations before judgment shall not bar any person holding a decree against the Defendant from attaching the property under sequestration, or affect the rights of persons not parties to the suit.

Sequestration not to bar the execution of decrees or injure third parties.

LXV.

But if the party at whose instance the property was sequestrated points out other property of the Defendant unattached, the creditor shall be bound in the first instance to attach and sell such property in execution of his decree, before selling the property under sequestration.

But person holding the decree is first to attach any other property of the Defendant that may be pointed out.

LXVI.

Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue due previously to the sale, (and with or without security at the discretion of the Court,) be put in immediate possession of the lands, and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of 1 per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.

Special case in which Plaintiff may be put in immediate possession of land the subject of suit.

Of Injunctions.

LXVII.

In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the cause is in danger of being wasted or damaged by any party to the suit, it shall be lawful to the Court to issue its injunction to such party, commanding him to refrain from doing the particular act or acts complained of, or to give such other orders for the purpose of staying and preventing him from wasting or damaging the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a cause, it shall be lawful to the Court to appoint a receiver or manager of such property, and if need be to remove the person or persons in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or

Cases in which an injunction to stay waste may be granted;

or in which a receiver or manager may be appointed.

manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper.

LXVIII.

Special rule in actions for injunctions.

In any suit for restraining the Defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the Plaintiff at any time after the commencement of the suit, and whether before or after judgment, to apply *ex parte* to the Court for an injunction to restrain the Defendant from the repetition, or the continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted or denied by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance; provided always, that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Of Withdrawing Suits.

LXIX.

How the Plaintiff may withdraw from a suit.

If the Plaintiff be desirous of withdrawing from the cause, he may give notice thereof to the Clerk or proper officer in person, or by his Attorney or Vakeel, and to the Defendant by pre-paid post letter; after the receipt of which by the Defendant he shall not be entitled to any further costs than those incurred up to its receipt, unless the Judge shall otherwise order; and proof that the letter was duly posted shall be sufficient proof of the receipt thereof by the Defendant, in the absence of evidence to the contrary.

LXX.

Effects of withdrawal.

If the notice be given to the officer at any time before the day mentioned in the summons, the Plaintiff shall be at liberty to bring a fresh suit for the same matter, unless precluded by the rules for the limitation of actions. If the notice be given on or subsequent to the day mentioned in the summons, the Plaintiff shall be precluded from bringing a fresh suit for the same matter, unless he shall have previously obtained the consent of the Defendant, or the permission of the Judge to withdraw the suit. It shall be competent to the Judge at any time before final judgment to grant such permission on what may appear to him sufficient grounds for so doing, and on such terms as to costs or otherwise as he may deem proper.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

LXXI.

Suit not to abate by death.

The death of a Plaintiff or Defendant shall not cause the suit to abate. A note of the death shall be entered on the register of the suit, and the suit may be continued as herein-after mentioned.

LXXII.

Proceedings in case of death of one or more of several Plaintiffs or Defendants.

If there be two or more Plaintiffs or Defendants, and one or more of them should die, and if the cause of action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

LXXIII.

Proceedings in case of death of one or more of several Plaintiffs,

If there be two or more Plaintiffs, and one or more of them should die, and if the cause of action shall not survive to the surviving Plaintiff or Plaintiffs alone, but shall accrue to them and the legal representative or representatives of

the deceased Plaintiff or Plaintiffs, the Court may, on the application of the legal representative or representatives of the deceased Plaintiff or Plaintiffs, enter the name or names of such representative or representatives in the register of the suit in the place or stead of such deceased Plaintiff or Plaintiffs, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs and such legal representative or representatives of the deceased Plaintiff or Plaintiffs; and if the application be made before the trial, and there be any dispute as to the fact of the person or persons so applying being the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased Plaintiff or Plaintiffs, and judgment shall be given in favour of or against the person or persons making such application, as if such person or persons were originally a Plaintiff or Plaintiffs. If no application shall be made to the Court by any person or persons claiming to be the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of the deceased Plaintiff or Plaintiffs to appear on a day to be fixed in such proclamation, and to proceed with the suit in his or their stead. If any person or persons shall appear on the day mentioned in the proclamation to proceed with the suit as the legal representative or representatives of the deceased Plaintiff or Plaintiffs, his or their name or names shall be entered in the register of the suit, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs and such person or persons so appearing as the legal representative or representatives of the deceased Plaintiff or Plaintiffs; and if the appearance be made before the trial, and there be any dispute as to the fact of the person or persons so appearing being the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the truth thereof shall be tried thereat together with the title of the deceased Plaintiff or Plaintiffs, and judgment shall be given in favour of or against the person or persons so appearing, as if such person or persons were originally a Plaintiff or Plaintiffs. And if no person shall appear on the day to be fixed in the said proclamation, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and if judgment be given in favour of the Defendant, the legal representative or representatives of the deceased Plaintiff or Plaintiffs shall be bound thereby equally with the surviving Plaintiff or Plaintiffs; but if judgmeut be given against the Defendant or Defendants, it shall only be to the extent of the share or shares of the surviving Plaintiff or Plaintiffs, and with a reservation of the rights of the legal representative or representatives of the deceased Plaintiff or Plaintiffs.

where the right of action accrues to the survivor and the representative of the deceased

LXXIV.

In case of the death of a sole Plaintiff or sole surviving Plaintiff, the Court may, on the application of the legal representative or representatives of such Plaintiff, enter the name of such representative or representatives in the place or stead of such Plaintiff in the register of the suit, and the suit shall thereupon proceed; and if such application be made before the trial, and the fact be disputed, the truth thereof shall be tried thereat with the title of the deceased Plaintiff, and judgment shall be given in favour of or against the person or persons making the application, as if such person or persons were originally the Plaintiff or Plaintiffs. If no application shall be made to the Court within what it may consider a reasonable time by any person or persons claiming to be the legal representative or representatives of the deceased sole Plaintiff or sole surviving Plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award the Defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate or estates of the deceased sole Plaintiff or surviving Plaintiff, or if the Judge shall think proper he may, on the application of the Defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative or representatives of the deceased sole Plaintiff or surviving Plaintiff, and prosecuting a suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

Proceeding in case of death of sole or sole surviving Plaintiff

LXXV.

If there be two or more Defendants, and one or more of them should die, and the cause of action shall not survive against the surviving Defendant or Defendants

Proceeding in case of death of one or more of

several Defendants, or of a sole or sole surviving Defendant.

alone, and also in case of the death of a sole Defendant or sole surviving Defendant, where the action survives, the Plaintiff may make an application to the Clerk or other proper officer of the Court, with the following particulars distinctly written in the language in ordinary use in judicial proceedings before the Court, viz., the name, description, and place of abode of any person or persons whom he alleges to be the legal representative or representatives of such Defendant or Defendants, and whom he desires to be made the Defendant or Defendants in his or their stead, and the Clerk or other proper officer of the Court shall thereupon enter the name of such representative or representatives in the register of the suit in the place or stead of such Defendant or Defendants, and shall issue a summons to him or them to appear on a day to be therein mentioned to defend the suit. If no application shall be made to the Court, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of such Defendant or Defendants to appear on a day to be fixed in such proclamation, and defend the suit. If any person or person shall appear on the day mentioned in the proclamation, to make defence to the suit, as the legal representative or representatives of the deceased, his or their name or names shall be entered in the register of the suit, in the stead of the deceased Defendant or Defendants, and the suit shall proceed in the same way as if such person or persons had been originally a Defendant or Defendants thereto. And if no person shall appear on the day to be fixed in the said proclamation, the Court may proceed to dispose of the cause in the manner provided in Article LXXXI., or may make such order as may appear to be just and proper in the circumstances of the case.

LXXVI.

Objections which are competent to the new Defendant.

In all cases in which the legal representative or representatives of a deceased Defendant or Defendants shall be entered in the register, in the stead of such deceased Defendant or Defendants, if the issues shall not have been settled before the death, the new Defendant or Defendants shall be entitled to make all objections which would have been competent to the deceased Defendant or Defendants, and in addition thereto may make such other objections to the suit as may be appropriate to and rendered nesessary by his or their character of legal representative; but if the issues shall have been settled before the death, the new Defendant or Defendants shall be at liberty to object only by way of denial, or to make such other objection only as may be appropriate to and rendered necessary by his or their character of legal representative, unless by the leave of the Judge he or they shall be permitted to object fresh matters; and in case the Plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sums sought to be recovered, and in respect of the costs prior to the entry of the name of the new Defendant or Defendants, as he would have been entitled to against the original Defendant or Defendants, and in respect of the costs subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the legal representative.

LXXVII.

Marriage of a female Plaintiff or Defendant not to abate the suit.

The marriage of a woman, Plaintiff or Defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued, upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree; and if in any such suit the wife shall sue or defend by Attorney or Vakeel appointed by her when sole, such Attorney or Vakeel shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the Attorney or Vakeel changed by authority of the Court.

LXXVIII.

Bankruptcy or insolvency when not to abate the suit.

The bankruptcy or insolvency of the Plaintiff in any suit which the assignees might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignees shall decline to continue the

suit, and give security for the costs thereof, within such reasonable time as the Judge may order; but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the suit, and to give such security, within the time limited by the order, the defendant may, within eight days after such neglect or refusal, object bankruptcy or insolvency as a reason for abating the suit.

Of Notices to produce, and how they are to be served.

LXXIX.

Two notices in writing to be delivered to the proper officer of the Court.

Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he supposes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the cause, he shall at the earliest opportunity deliver to the Clerk or proper officer of the Court two notices in writing to the party in whose possession or power he supposes the document, writing, or other thing, to be, calling upon him to produce the document, writing, or other thing, on the day on which he wishes the same to be produced; and one of such notices shall be retained by the officer, and the other shall be delivered by him to the bailiff or proper officer, to be served in the manner herein-after mentioned:

How the notice is to be served.

1. If the party on whom the notice is to be served shall have employed an Attorney or Vakeel to act for him in the cause, the notice shall be served on such Attorney or Vakeel by delivering the notice to him personally, or by leaving it at his office or ordinary place of residence.
2. If a party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall have his place of abode within a radius of eight miles from the Court House, the notice shall be served on him by delivering it to him personally, or leaving it at his place of abode.
3. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall not have his place of abode within a radius of eight miles from the Court House, but shall have entered in the book, to be kept for that purpose by the proper officer, the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall be served by delivering the same to such person, or by leaving it at his place of abode.
4. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall neither have his own place of abode within a radius of eight miles from the Court House, nor shall have entered in the book to be kept for that purpose the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall in like manner be served by delivering the same to the party in person or by leaving it at his place of abode; unless the notice be for some day subsequent to the first hearing of the cause, in which case it shall be sufficient service of the notice if it be fixed up in some conspicuous place in the office of the Clerk or proper officer of the Court, and also in some conspicuous place of the Court House.

Of the Appearance of the Parties, and Judgment by Default for Non-appearance.

LXXX.

Parties must appear in person or by Attorney.

On the day in that behalf mentioned in the summons, and from day to day, if necessary, until the cause is called on, the parties shall be in attendance at the Court House in person or by an Attorney or Vakeel of the Court duly empowered to represent them in all matters relating to the prosecution or defence of the action, as the case may be.

LXXXI.

Consequences of non-appearance

If, on the day fixed for the hearing of the cause, or any other day subsequent thereto on which the cause may be called on, neither party appears, either in

of a sole Plaintiff or Defendant.

person or by an Attorney or Vakeel of the Court, when duly called upon by the proper officer of the Court, the cause shall be struck out, with liberty to the Plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions. If the Plaintiff shall appear in person or by Attorney or Vakeel and the Defendant shall not appear in person or by Attorney or Vakeel, and it shall be proved to the satisfaction of the Judge that the summons was duly served, or if the Defendant, having appeared in person or by Attorney or Vakeel, shall refuse to answer to the claim of the Plaintiff, then and in any of these cases the Judge shall pass judgment against him by default. And in like manner, if the Defendant shall appear in person or by Attorney or Vakeel, and the Plaintiff shall not appear in person or by Attorney or Vakeel, or, having appeared, shall refuse to state his claim or to answer any questions respecting the same that the Judge may think proper to put to him, then and in any of these cases the Judge shall pass judgment against the Plaintiff by default.

LXXXII.

When there are several Plaintiffs or Defendants each may authorize the other to appear for him.

When there are two or more Plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more Defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed with the proper officer of the Court; when so filed it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act were a Vakeel of the Court.

LXXXIII

When such appearance may be made without special authority.

Nothing in the preceding Article contained shall be taken to prevent any one of two or more Plaintiffs or Defendanis from appearing for the other or others of them respectively, without any special authority, when already entitled by law so to do by reason of unity of interest in the matter in dispute, or otherwise howsoever.

LXXXIV.

Consequence of non-appearance of one or more of several Plaintiffs.

If there are two or more Plaintiffs, and one or more of them shall appear in person, or by Attorney or Vakeel, or by a Co-Plaintiff or Co-Plaintiffs duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by Attorney or Vakeel, or by Co-Plaintiff or Co-Plaintiffs duly authorized or entitled as aforesaid, it shall be competent to the Judge to proceed with the suit at the instance of the other Plaintiff or Plaintiffs who shall have appeared, in the same way as if all the Plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if

Consequence of non-appearance of one or more of several Defendants.

there are two or more Defendants, and one or more of them shall appear in person, or by Attorney or Vakeel, or by a Co-Defendant or Co-Defendants, duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by Attorney or Vakeel, or by a Co-Defendant or Co-Defendants duly authorized or entitled as aforesaid, and if the Plaintiff or Plaintiffs shall consent to abandon the suit against the Defendant or Defendants who shall have appeared, and if judgment by default can be given against the Defendant or Defendants who shall not have appeared, without detriment to the rights or interests of the other Defendant or Defendants, judgment may be given by default against the Defendant or Defendants who shall have so failed to appear, upon such terms as to the costs of the other Defendant or Defendants, or otherwise, as to the Judge may seem proper; but if the Plaintiff or Plaintiffs shall not agree to abandon the suit against the Defendant or Defendants who shall have appeared, or if judgment cannot be given by default against the Defendant or Defendants who shall not have appeared, without detriment to the rights or interests of the Defendant or Defendants who shall have appeared, the Judge shall proceed with the cause to judgment, and shall at the time of passing his judgment give such order with respect to the Defendant or Defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

LXXXV.

When and how judgment by d-

In all cases of judgment against a Defendant by default, for non-appearance, he may apply, at any time before the same shall have been finally executed,

to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Judge that the summons was not duly served, or that the Defendant was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the cause. And in like manner in all cases of judgment against a Plaintiff by default for non-appearance, he may apply, within a reasonable time, for an order to set aside the judgment; and if it shall be proved to the satisfaction of the Judge that the Plaintiff was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the cause. In all cases whatsoever of judgment by default, in which a Judge shall pass an order for setting aside the judgment, his order shall be final; but in all cases in which he shall reject an application to set aside a judgment by default, an appeal shall lie from his order refusing the application, to the tribunal to which his final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

fault may be set aside.

LXXXVI.

If it shall not be proved to the satisfaction of the Judge that the summons was duly served on the Defendant in sufficient time to enable him to appear in person or by Attorney or Vakeel on the day fixed for the hearing of the cause, the Judge shall, at the option of the Plaintiff, either postpone the cause to a future day, and grant him a second summons to the Defendant, to be served in like manner as aforesaid, in continuation of the existing suit, or permit him to withdraw his suit, and if he shall elect to withdraw his suit, he shall be at liberty to institute a fresh suit for the same matter against the Defendant in the same Court, or in any other Court of competent jurisdiction, at any time, unless precluded by the rules for the limitation of actions.

When the Defendant has not been summoned in sufficient time, the Plaintiff may apply for a new summons or bring fresh suit.

Of the Examination of the Parties.

LXXXVII.

In all suits in which both the parties appear in person or by Attorney or Vakeel before the Judge, they or their Attorneys or Vakeels may be examined orally by the Judge, and it shall be incumbent on them respectively to answer such questions in regard to the suit as he may think proper to put to them.

Examination of the parties or their Attorneys.

LXXXVIII.

If any of the parties shall appear by an Attorney or Vakeel of the Court, and such Attorney or Vakeel shall refuse, or be unable to answer any material question relating to the case, which the Judge is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Judge shall postpone the hearing of the cause to a future day, and direct that the party whose Attorney or Vakeel may have refused, or been unable to answer as aforesaid, shall attend in person on such day, and shall pay the costs of the opposite party;—and if the party so directed to attend shall fail to appear in person on the day to be so appointed, the Judge may pass judgment against him, as in case of default, or give such other order in relation to the cause as he may deem proper in the circumstances of the case.

Consequence of refusal or inability of Attorney to answer.

Of the Production of Documents.

LXXXIX.

The parties, or their Attornies or Vakeels, shall bring with them, and have in readiness at the first hearing of the cause, to be produced when called upon by the Court, all their documentary evidence of every description, and all documents, writings, or other things which may have been specified in any notice to produce which may have been served on them respectively within a rea-

Documentary evidence to be produced at first hearing.

sonable time before the hearing of the cause; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production of the document at the first hearing.

XC.

Exhibits may be admitted or rejected by the Court.

All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible.

XCI.

Unstamped documents may be received on payment of duty and penalty.

If the exhibit be a deed, instrument, or writing, chargeable with stamp duty under the existing Regulations of the Bengal Code, or Acts of the Council of India, it shall not be received in evidence if unstamped or not sufficiently stamped, until the whole or the deficiency (as the case may be) or the stamp duty and the penalty required by the existing Regulations of the Bengal Code or Acts of the Council of India shall have been paid to the Clerk or proper officer of the Court.

XCII.

Duty and penalty to be received by officer of Court.

Such officer shall, upon payment to him of the whole, or of the deficiency (as the case may be) of the stamp duty payable upon or in respect of such document, and of the penalty required by the Regulations of the Bengal Code or Acts of the Council of India, give a receipt for the amount of the duty or deficiency which the Judge shall determine to be payable, and also of the penalty; and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall at the end of every month duly make a return to the collector of revenue of the Zillah of the monies (if any) which he has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the cause and the names of the parties from whom he received such monies, and the date, if any, and description of the document, for the purpose of identifying the same; and he shall pay over the said monies to the collector of revenue, or to such person as he may appoint or authorize to receive the same; and the collector of revenue, or other proper authority, shall, upon production of the receipt herein-before mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid.

XCIII.

How admitted exhibits are to be marked.

When an exhibit is received by the Court, and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record.

XCIV.

Rejected exhibits to be marked and returned.

When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in the last preceding article, with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons, to reclaim it; and in all cases in which a rejected exhibit is returned, a certified copy of the exhibit and the endorsement shall be kept by the Court.

XCV.

When exhibit admitted in evidence may be returned.

When the time for appealing has elapsed, or in case the suit has been appealed, then after the appeal has been finally disposed of, either party shall be entitled, on application to the Court in which the exhibit may be, to receive back any document produced by him in the suit, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice, as on suspicion of forgery.

XCVI.

Any exhibit may be returned before the time mentioned in the last preceding Article, if the Judge of the Court in which the document may happen to be shall think proper, for special reasons, to order its return.

May be returned sooner, for specia reasons.

XCVII.

In all cases in which a document once received by a Court of Justice and admitted in evidence is restored, a copy, properly certified, shall be substituted for it in the record of the suit, and a receipt shall be given by the party receiving it in a separate receipt book kept for the purpose.

Certified copy of returned exhibits to be kept.

XCVIII.

Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own records or from any other public office or Court, the record of any other suit or case, and inspect the same, when the inspection of such record or any part of it shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Court may send for papers from its own records or from other public offices or Churts.

Of the Settlement of Issues.

XCIX.

If in the course of the oral examination of the parties or their Attorneys or Vakeels it shall appear that they are not at issue upon any question of law or fact, the Court may at once give judgment; and if it shall appear that they are at issue on some question of law or fact, the Judge after he shall have satisfied himself by such oral examination of the parties or their Attorneys or Vakeels, on what questions of law or fact they are really at issue, will proceed to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend.

Framing of issues.

C.

For the purpose of assisting the Judge in framing the issues, the parties or their Attorneys or Vakeels may tender at the first hearing of the cause written statements of their respective cases, which statements the Judge shall receive and peruse, and put on the record; but he may, nevertheless, frame the issues from the allegations of fact which he collects from the oral examinations, notwithstanding any difference between such allegations of fact, and the allegations of fact contained in the written statements so tendered by the parties or their Attorneys or Vakeels.

Written statement may be tendered by the parties to assist the Judge at the first hearing of the cause.

CI.

No such written statement shall be received after the first hearing of the cause, unless called for by the Judge under the power herein-after contained.

No statement to be taken thereafter unless called for by the Judge.

CII.

It shall be competent to the Judge, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties, for the purpose of assisting him to frame or amend the issues.

Judge may at any time call for a written statement.

CIII.

Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

How written statements are to be framed.

CIV.

If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix,

Judge may reject an improper statement,

or that it contains matter irrelevant to the suit, the Judge may reject the same; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for by the Court. If the Judge think proper, he may, instead of absolutely rejecting the written statement, receive and record the same, after he shall have struck out all such parts of the written statement as he may consider to be argumentative, unnecessary, or irrelevant; and such parts of any written statement as may be so struck out by the Judge shall be disallowed upon any taxation of costs as between party and party. It shall also be competent to the Judge to impose upon the party from whose written statement he shall see fit to strike out any part, as being argumentative, unnecessary, or irrelevant, a fine not exceeding fifty rupees.

or expunge irrelevant matter,

and fine party presenting it.

CV.

If the Judge shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, he may adjourn the framing of the issues to a future day, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by subpœna or other suitable process.

Judge may call for a person whom he thinks it proper to examine before framing the issues.

CVI.

At any time before the decision of the case, the Judge may amend the issues on such terms as to him shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

Amendment of issues.

CVII.

If either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground after the decision of the case.

Appeal.

Of Issues by Agreement of Parties.

CVIII.

When the parties to a suit are agreed as to the question or questions of fact, or of law or equity, to be decided between them, they may, at any time after the issue of the summons, state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Judge in the affirmative or the negative of such issue a sum of money fixed by the parties, or to be ascertained by the Judge upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts, specified in the agreement, and having reference to the matter in dispute, either with or without the costs of the suit.

Questions of fact, or of law or equity, may be stated by the parties in the form of an issue, and an agreement may be entered into for the payment of a sum of money, or the doing or the refraining to do a particular act, according to the result of the issue.

CIX.

If the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties. and that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried or decided, he may proceed to record and try the same, and deliver his finding or opinion thereon in the same manner as if the issue had been framed by himself in an ordinary suit, and may upon his finding or deciding in such issue, give judgment for the sum so fixed by the parties or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

The Judge, if satisfied that the agreement was executed *bonâ fide* may decree accordingly.

When the Suit may be disposed of at the First Hearing.

CX.

If the Court shall be satisfied that the questions of law or fact on which the parties are at issue do not require any further argument or proof than such as the parties or their Attorneys or Vakeels can at once supply, the Court may at once decide such question, if the summons have been issued for a final disposal of the cause; and if the summons have been issued for a settlement of issues only, the Court may in like manner at once decide the question, if the parties consent thereto.

If the summons, was for a final disposal of the case, or the parties consent, suit may be decided at first hearing;

CXI.

When the summons has been issued for the settlement of issues only, if the parties or either of them do not consent that the Court shall at once decide the questions of law or fact on which they may be at issue, or if the questions of law or fact on which they are at issue require further argument or proof than the parties or their Attorneys or Vakeels can at once supply, the Judge shall postpone the further hearing of the cause, and shall fix a day for the production of further evidence, or for further argument, as the case may require.

otherwise, the hearing of the case to be postponed.

Of Adjournments.

CXII.

The Judge may, at any stage of the suit, grant time to the parties, or either of them, and may from time to time adjourn the hearing of the cause as he may think fit; and in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Judge shall otherwise direct.

Judge may grant time, or adjourn to a future day.

CXIII.

If on any day to which the hearing of the cause may be adjourned, the parties or either of them shall not appear in person or by Attorney or Vakeel, the Court may proeeed to dispose of the cause in the manner specified in Article LXXXI. or Article LXXXIV., as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

How the Judge is to proceed if the parties fail to appear on the day fixed.

Of Summoning Witnesses.

CXIV.

The parties, or their Attorneys or Vakeels, may at any time obtain, on application to the Clerk or other proper officer of Court, summonses to witnesses or other persons, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted.

Application for Summons.

CXV.

The person applying for a summons shall pay to the Clerk or proper officer of the Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules, if any, established by the Court to which such Court shall be immediately subordinate. The sum so paid to the officer shall be tendered to the witness or other person, at the time of serving the summons, if it can be served personally. In addition to the sum so paid, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness or other person summoned shall not be bound to give evidence, or produce any document until such sum shall be paid.

Expenses of witnesses to be paid before issue of summons.

CXVI.

Time and place of attendance to be specified in summons.

Every summons for the attendance of any witness or other person shall specify the time and place at which he is required to attend, and also the purpose for which his attendance is required; and any particular document or documents which the witness or other person may be called on to produce shall be described in the summons with convenient certainty. The witness shall further be required to produce all deeds and documents in his possession relating to the subject of the suit, and shall be bound to produce them unless he shall satisfy the Judge that the notice to produce did not give him sufficient information.

CXVII.

Summons to produce a document or to assist in framing issues.

Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Service of Summons on a Witness.

CXVIII.

How the summons shall be served.

Every summons shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

CXIX.

Service to be on the witness, or a member of his family.

Whenever it may be practicable, the service of the summons shall in all cases be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult member of his family residing with him.

CXX.

When the summons cannot be served it is to be returned to the Court.

When the person required to attend cannot be found, and there is no adult member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

CXXI.

Time and manner of service to be endorsed on the summons.

The serving officer shall in all cases in which the summons has been served endorse on the original summons the time and the manner where and how it was served.

CXXII.

How a summons on a witness who resides in another jurisdiction is to be served.

If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Clerk or proper officer of the Court in which the suit is pending, to the Clerk or proper officer of the Court within whose jurisdiction the person required to attend may reside; and the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

CXXIII.

When a witness absconds his property may be attached.

If any person for whose attendance either to give evidence or to produce a document, a summons shall be issued, cannot be served in either of the ways herein-before specified, the Court on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness absconds or keeps out of the way, may cause a proclamation requiring the attendance of

such person to give evidence, or produce the document, at a time and place to to be named therein, to be affixed in some conspicuous place upon or near to his house or place of abode; and if such person shall not attend at the time and place to be named in such proclamation, his property (real and personal), to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment, as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale.

CXXIV.

How the Court is to proceed with the witness on his appearance.

The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property if the witness shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not such a notice of the proclamation as aforesaid, it shall be in the discretion of the Court to order the property attached, or any part thereof, to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such default, or absconding or keeping out of the way, and any fine which the Court may deem fit to impose upon the witness under the provisions of Article CCIX., or the Court may order the property to be released from the attachment upon payment of such costs and fine as aforesaid.

Of the Examination of Parties as Witnesses.

CXXV.

Parties may be examined.

When a party to a suit appears in person at any hearing of the cause, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

CXXVI.

Special application to be made for the examination of a party as a witness.

If any party to the suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his Attorney or Vakeel, make a special application to the Court for an order that the party do attend, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

CXXVII.

The Court may first issue a notice to show cause.

The Court, if it think fit so to do, may, before making such order, cause notice to be given to the party or his Attorney or Vakeel, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such application.

CXXVIII.

May receive a written declaration in support of the cause shown.

In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and delivered into the Court by himself or his Attorney or Vakeel.

CXXIX.

If no sufficient cause be shown, summons to issue.

If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Attendance of Witnesses, and Consequence of Non-attendance.

CXXX.

Persons summoned to give evidence must attend.

Any person who shall be summoned to appear and give evidence in a cause shall be bound to attend at the time and place named for that purpose.

CXXXI.

Consequences of non-attendance by a witness not a party to the suit.

If any witness, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Article CXIX., shall, without lawful excuse, fail to comply with such summons, the Court may issue an order to the bailiff or other proper officer to apprehend and bring the witness before the Court. If any such person abscond or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided in Article CXXIII. with respect to a witness on whom the service of a summons cannot be effected.

CXXXII.

Consequences of refusal to give evidence.

If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition as herein-after required, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to sign his deposition, or to produce the document; after which, in the event of his persisting in his refusal, the Court may proceed to deal with him according to the provisions of Article CCIX.

CXXXIII.

Consequence of non-attendance or refusal of a party.

If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, as in case of default, or give such other order in relation to the cause as the Court may deem proper in the circumstances of the case.

CXXXIV.

Any person present in Court may be called upon to give evidence though not summoned.

Any person present in Court, whether a party or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be examined.

CXXXV.

Witnesses must be examined at the hearing of the cause in open Court in the presence of the Judge.

On the day appointed for the hearing or trial of the cause, or on some other day to which the hearing or trial may be adjourned, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal may lie to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit, or their Attorneys or Vakeels. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his Attorney or Vakeel shall require it. If any question put to a witness be objected to by either of the parties, or their Attorneys or Vakeels, and the Court shall allow the same to be put, the question and answer

shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of the witness while under examination. In cases where an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge shall make a short memorandum of the substance of what each witness may have deposed at the trial of the cause, and such memorandum shall be written and signed with his own hand, and shall form part of the record.

CXXXVI.

If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, at any time after summons issued, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the other party if the day be fixed in his absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner herein-after prescribed; and the deposition so taken down may be read in evidence at the trial, or any hearing of the cause.

But a witness may for special cause be examined immediately.

CXXXVII.

All witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Witnesses to be examined without oath, affirmation, or warning.

Of Commissions to examine absent Witnesses and make local Inquiries.

CXXXVIII.

When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Judge to be personally examined, or is a person exempted by law absolutely, or at the discretion of the Court, by reason of rank, sex, or other special cause, from personal appearance in Court, the Court may, on the application of any of the parties to the suit, order a Commission to issue for the examination of the witness on interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions for taking such examinations, as well within the jurisdiction of the Court wherein the suit shall be pending as without, as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Judge may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of the High Court, but within its general jurisdiction, the Commission shall ordinarily be issued to the Court within whose particular jurisdiction the witness may reside, or which can most conveniently execute the same; but under special circumstances, which may appear to render a different course expedient, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

Cases in which Court may issue a Commission to examine witnesses.

Where the witness is within the Court's jurisdiction.

Where the witness is beyond the Court's jurisdiction.

CXXXIX.

If the witness be resident within the local jurisdiction of the High Court, the Commission shall ordinarily be issued to the Moonsiff of Agra, but may, under special circumstances, be directed to any other person or persons whom the Court issuing the Commission may think proper to appoint.

Where the witness is within the local jurisdiction of the High Court.

CXL.

Where the evidence is required of a witness who is resident at some place beyond the general jurisdiction of the High Court, the application for a Com-

Where the witness is beyond the general jurisdic-

tion of the High Court.

mission to examine the witness must in all cases be made to the High Court. If the suit in which the evidence of the witness is required be pending in some other Court than the High Court, the application must be accompanied by a certificate from the Court in which the suit is pending, that the application is made with its permission. In all cases of an application to the High Court for a Commission to examine a witness, the Commission may be issued to any person or persons whom the High Court may think proper to appoint; and whenever a Commission is issued from the High Court for the examination of a witness in a suit pending in any other Court the Commission shall be made returnable to the Court in which the suit is pending.

CXLI.

Commission to be returned with the deposition of the witnesses.

When depositions may be read in evidence.

After the Commission has been duly executed, it shall be returned, together with the deposition or depositions of the witness or witnesses who may have been examined thereunder, to the Court out of which the Commission issued (except as in the last preceding article mentioned), unless otherwise directed by the order for issuing the Commission, and then it shall be returned in terms of such order, and it shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by law absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court, at its discretion, to authorize the reading of the deposition. And all depositions taken under any Commission which may be issued as aforesaid, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

CXLII.

Commission for local investigations.

In suits regarding lands or houses, or their limits or boundaries, in which the Court may deem a local investigation to be requisite or proper, for the purpose of elucidating the matters in dispute, the Court may issue a Commission to any person whom it may think proper to appoint, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine, not only such witnesses as may be produced to him by the parties or any of them, but any other person or persons whom he may think proper to call upon to give evidence in the matters referred to him; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the Commissioner during the investigation of the matters committed to him, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the Commissioner, as they would incur for the same offences in suits tried before the Court; provided that the Commissioner shall report the order to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order. The Commissioner shall, after such local inspection as he may deem necessary, and after reducing to writing, in the manner herein-before prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions of such witnesses as he may have examined, shall return the depositions, together with his report in writing, subscribed with his name, to the Court issuing the Commission. The report and depositions shall be taken as evidence in the cause, and shall form part of the record; but it shall be competent to the Court, or to the parties or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him, or mentioned in his report, or the manner in which he may have conducted the investigation. The Court may order such sum to be paid to the Commissioner as

The report of the Commissioner to be taken as evidence in the cause; but he may be examined in person.

may be thought reasonable for his trouble and expenses, and the sum so ordered to be paid shall be considered as costs in the cause, unless the Court shall otherwise direct.

CXLIII.

A Commissioner may be appointed to investigate and adjust accounts.

In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Judge to appoint any person whom he may think proper to be a Commissioner, for the purpose of making such investigation or adjustment, and to direct that the parties or their Attorneys or Vakeels shall attend upon the Commissioner during such investigation or adjustment. In all such cases the Judge shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioners are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further inquiry as may be requisite, and will pass such ultimate judgment or order as may appear to him to be right and proper in the circumstances of the case.

Of Judgment and Decree.

CXLIV.

When judgment is to be pronounced.

When the exhibits have been perused and considered, and the witnesses examined, and the parties have been heard in person, or by their respective Advocates, Attorneys, or Vakeels, the Court shall pronounce its judgment, either immediately or on some future day, of which due notice shall be given to the parties or their Attorneys or Vakeels.

CXLV.

Rights of all the heirs to be declared in cases of succession,

In any suit concerning the succession or right of inheritance to any zemindary, talook, land, house, or other real property, where more persons than one would, by the Hindoo or Mahomedan Law, be entitled to a portion of the estate, the decree shall adjudge the property, as far as may be practicable, among all the heirs in the proportions to which they may be respectively entitled.

CXLVI.

The Judge to state his decision on each issue;

In all suits in which issues have been framed the Judge shall state his finding or decision on each separate issue.

CXLVII.

and to direct by whom costs are to be paid.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Judge shall have full power to award and apportion costs, in any manner he may deem proper, except in so far as is herein otherwise provided.

CXLVIII.

What is included in costs.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree that may have been passed therein, such as the expense of summoning the Defendants, fees of Advocates, Attorneys, or Vakeels, or officers of court, and subsistence money to peons or other persons employed in serving processes, charges of witnesses, and sums awarded to Commissioners either in taking evidence or in local investigations.

CXLIX.

How the judgment is to be delivered

The judgment shall be pronounced in open Court, and in all Courts except the High Court it shall be imperative on the Judge to state the reasons for his judgment at the time of pronouncing the same. The judgment shall in all cases be written out and signed by the Judge. The judgment shall be written out in the vernacular language of the Judge, except when the Judge, being

a native of the country, and sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, may prefer to write his judgment in English, and in that case the judgment may be written out in the English language. Whenever the judgment is written out in any other language than that which is in ordinary use in the proceedings before the Court, the judgment shall be translated into such language so being in ordinary use in the Court, and the translation shall also be signed by the Judge.

CL.

What the decree is to contain.

The decree shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, the title of every exhibit produced in the cause, and the names of any witnesses who may have been examined, and a distinct statement of the issues when any may have been framed. It shall also contain an exact copy of the ordering part of the judgment or a translation thereof in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge.

CLI.

Copies of the decree to be furnished gratuitously.

Copies of the decree shall be furnished gratuitously to the parties or their Attorneys or Vakeels, on application to the Clerk or other proper officer of the Court.

CLII.

When a native officer or soldier is a party to the suit, a copy of the decree is to be sent to his commanding officer.

When a native officer or soldier in the service of the Government is a party to a suit, and is not present at the time of its decision, an authenticated copy of the decree shall be transmitted by the Court to the commanding officer of the corps or detachment to which such native officer or soldier shall belong, for the purpose of its being communicated to him.

CHAPTER III.

Execution or Enforcement of Decrees.

CLIII.

How decrees are to be enforced.

If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom the same may have been adjudged; if the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by imprisonment of the party adjudged to perform the same, or by attaching his or their property, and keeping the same under sequestration until further order of the Court, or by both imprisonment and sequestration if necessary; if the decree be for money, it shall be enforced by the imprisonment of the party against whom the same may have been adjudged, or the attachment and sale of his property, or by both if necessary; and if such party be other than a Defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a Defendant.

Application for Execution.

CLIV.

Application for execution how to be made.

The application for execution of a decree shall be made to the Clerk or other proper officer of the Court by the applicant in person, or through his Attorney or Vakeel in the cause, or some other Attorney or Vakeel duly appointed to act for him in that behalf, in manner herein-before mentioned.

CLV.

If the person by or against whom the decree has been

If any person in whose favour a decree has been passed shall die or become bankrupt or insolvent after such decree, and before execution shall be fully had thereon, application for execution of the decree may be made by or on behalf

of the legal representative or representatives, or the assignee or assignees, of the person so dying or becoming bankrupt or insolvent as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly. And, in like manner, if any person against whom a decree has been passed shall die after such decree, and before execution has been fully had thereon, application for execution thereof may be made against the legal representative or representatives or the estate of the person so dying as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly.

obtained shall die, or become bankrupt or insolvent, application for excution may be made by or against his legal representative.

CLVI.

The application for execution of a decree shall be accompanied with the following particulars distinctly written in the language in ordinary use in proceedings before the Court, viz., the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, if the suit were for money; the amount of costs, if any were awarded; the name of the person or persons against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person or persons named, or attachment of his or their property.

Particulars to be given with the application.

CLVII.

When the application is for an attachment of the defendant's land or other immoveable property, it shall also be accompanied with an inventory or list of such property, containing such a description of each item thereof as may be sufficient to identify it, together with a specification of the Defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been able to ascertain the same. And where the property is an estate paying revenne to Government, or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the jummah of such estate, and the names and shares of the registered proprietors.

Further particulars when the application is for an attachment of immoveable property.

CLVIII.

Where the application is for an attachment of the Defendant's moveable estate, or any part thereof, or of debts or money belonging to him, it may also be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of each item thereof; or the Plaintiff may apply for a general attachment of the Defendant's moveable estate, debts, and money, wheresoever the same can be found, to the amount of the judgment and costs.

The application for an attachment of moveable property may be special or general.

CLIX.

The Clerk or other proper officer of the Court, on receiving any application for execution of a degree, accompanied with the particulars above mentioned, or such of them as may be applicable to the case, shall compare the same with the original decree contained in the record of the cause; and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made, in the register of the suit. If the particulars shall not be found to correspond with the original decree, the Clerk or other proper officer shall either return them for correction to the person making the application, or shall, with the consent of such person, make the necessary correction himself.

Duty of the officer on receiving the application.

Measures required in certain Cases preliminary to the Issue of the Warrant.

CLX.

If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be solicited by or against individuals being heirs or representatives of the

In certain special cases, the Defendant may be called on to show cause.

original parties in the suit, or against one only of several individuals equally affected by the decree, or if it shall appear that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing or property adjudged, or by the payment of the sum decreed, either in whole or in part, or by giving security for the same, or entering into an instalment bond or otherwise, or where the decree is for the delivery of a specific moveable, or for the specific performance of a contract or any other particular act, and the application is for the enforcement thereof by imprisonment of the party adjudged to deliver or perform the same, the Clerk or other proper officer of the Court shall, instead of proceeding to the immediate enforcement of the decree, submit the application for execution thereof to the Judge; and it shall be competent to the Judge, if he shall think proper, to issue a notice to the party against whom execution may be sued for, requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by Attorney or Vakeel, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall extend in person or by Attorney or Vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order as in the circumstances of the case may appear to be just and proper.

CLXI.

Application for a general attachment of moveable property must be referred to the Judge.

Where the application is for a general attachment of the moveable estate of the Defendant, the Clerk or other proper officer of the Court shall submit the application to the Judge, and it shall be competent to the Judge, if he shall think proper, (and if the Plaintiff shall in person, or by his agent, give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person or persons than the Defendant,) to direct that an order do issue for the attachment of the Defendant's moveable property wherever the same may be found, to the amount of the judgment and costs, or such other sum as may be specified in such order.

CLXII.

The Judge may summon and examine the Defendant as to his means of payment.

Before granting the order for a general attachment, or upon the application of the Plaintiff at any time after judgment and before complete execution of the decree, the Judge may summon the Defendant and examine him as to his property and his means of satisfying the judgment, in the same way as if he were not a party to the suit.

CLXIII.

If the Judgment be by default and for land, a proclamation for claimants to be issued before execution.

If the decree be for a zemindary, talook, land, house, or other real estate or property, or any share therein, and the judgment shall have been passed against the Defendant or Defendants by default, the Clerk or other proper officer of the Court, before proceeding to execute the decree, shall issue a proclamation calling upon all persons having any claim to the property in question to appear on a certain day, to be specified in the proclamation, and which shall not be later than fifteen days from the date of the application for the execution of the decree, either in person or by an Attorney or Vakeel, and be prepared to state their claims to the Court, and support them by sufficient evidence.

CLXIV.

How the proclamation is to be published.

The proclamation shall be read aloud by the bailiff or other proper officer in some public place within the limits of or adjacent to the zemindary, talook, land, house, or other real estate or property, for which, or a share in which, the judgment by default may have been given, and a copy thereof shall be fixed up in some conspicuous part of the Court House; and if the judgment by default shall have been given by any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the judgment may have been given.

CLXV.

If no claimant to the property shall appear on the day fixed in the proclamation, either in person or by Attorney or Vakeel, to offer any objection to the execution of the decree, the Court shall order the decree to be executed in the same manner as if the judgment had not been given by default.

If no claimant appear, execution to issue.

CLXVI.

If on the day fixed in the proclamation, any claimant to the property shall appear, in person or by Attorney or Vakeel, and shall offer any objection to the enforcement of the decree, the Court shall proceed forthwith to investigate the same, in the like manner and with the like powers as if the claimant had been originally made a Defendant to the suit, but shall restrict its inquiry to the fact of possession only; and if it shall appear to the satisfaction of the Court, that the zemindary, talook, land, house, or other estate or property mentioned in the decree was not in the possession of the party against whom the judgment by default may have been given, nor in the occupancy of ryots, or cultivators, or other persons, paying rent to him at the date of the commencement of the suit, the Judge shall pass an order to stay execution of the decree, and shall call upon the party applying for execution thereof to show cause why the judgment should not be set aside and cancelled. And if the party shall fail to show cause to the satisfaction of the Court, the Court shall forthwith cancel the said judgment, and an entry of the cancellation shall be made in the Register of the suit. If it shall appear to the satisfaction of the Court that the zemindary, talook, land, house, or other estate or property mentioned in the decree, was in the possession of the party against whom the judgment by default was given, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the date of the commencement of the suit, it shall direct the decree to be executed in the same way as if the judgment had not been by default. The decision of the Court in the investigation mentioned in this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Investigation of claims, how to be made.

Issue of the Warrant.

CLXVII.

When the Clerk or other proper officer of the Court is satisfied as to the particulars above referred to, and all necessary preliminary measures have been taken when any such are required, he shall forthwith prepare and issue, under the seal of the Court, the proper warrants for the execution of the decree.

Warrant to be under seal of Court.

CLXVIII.

Every warrant for execution of decree shall bear date on the day on which the same shall be issued, and shall be sealed with the seal of the Court, and delivered to the bailiff or other proper officer. A day shall be specified at the bottom of the warrant on or before which it must be executed, and the bailiff or other proper officer shall in all cases endorse upon the order the day and the manner in which it was executed, and shall return it with such endorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be endorsed.

Of the Execution of Decrees for Immoveable Property.

CLXIX.

If the decree be for a house or other immoveable property not in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

How immoveable property is to be delivered when not in the occupancy of ryots.

CLXX.

How is it to be delivered when in the occupancy of ryots.

If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, at some convenient place or places, the substance of the decree in regard to the property.

CLXXI.

Obstruction to execution of decree for land.

If the decree shall be for the possession of a zemindary, talook, land, house, or other real estate or property, or share therein, and the party or parties in whose favour the same shall have been adjudged shall be resisted or obstructed by any person or persons in obtaining effectual possession thereof, and shall make an application to the Court, either in person or by Attorney or Vakeel, at any time within one month from the date of the officer's return to the warrant for execution of the decree, the Court shall fix a day for investigating into the

Defendant may be summoned if suspected of obstruction.

matter of his complaint, and if reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question has been occasioned by the Defendant or Defendants, or by some other person or persons at his or their instigation, the Court shall issue a summons to the Defendant or Defendants calling upon him or them to appear, on the day appointed for the investigation, to attend and give evidence.

CLXXII.

Court how to proceed if he cannot be found or fails to attend.

In all cases in which a summons shall be issued for the attendance of a party at any time or for any purpose after judgment, the summons shall be served in the manner herein-before prescribed for the service of a summons upon a witness, and if he cannot be served in either of the ways specified in Article CXIX., or if after being served he shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, he shall be liable to be dealt with in the same way as if he were not a party to the suit, and as any other person would be dealt with in the like circumstances under Articles CXXIII., CXXXI., and CXXXII. respectively.

CLXXIII.

How Defendant may be dealt with if he persists in obstructing the Plaintiff.

If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was caused or occasioned by the Defendant or Defendants, or by any other person or persons at his or their instigation, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree by the Defendant or Defendants, or some person or persons at his or their instigation, the Court may, without prejudice to the operation of the provisions of Article CCIX., commit the Defendant or Defendants to close custody until further orders.

CLXXIV.

Obstruction by a *bonâ fide* claimant.

If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person or persons claiming *bonâ fide* to be in possession of the estate or property on his own account, or on account of some other person or persons than the Defendant or Defendants to the suit, the Court shall, without prejudice to the provisions of Article CCIX., proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a Defendant to the suit, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case; and the order of the Court shall not be subject to appeal, but the party against whom the same may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Of the Execution of Decrees for Money by Attachment of Property.

CLXXV.

What property may be attached in execution of decree.

If the decree be for money, and the person or persons applying for execution thereof shall desire that the amount shall be levied from the estate and property of the person or persons against whom the same may have been pronounced, the Court shall cause the attachment of any lands, houses, goods, chattels effects, money, bank notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, or other property whatsoever, moveable or immoveable, belonging to the Defendant or Defendants, or whether the same be held in his or their own name or names, or by another person or other persons in trust for him or them, or on his or their behalf, to the amount or value of the sum decreed and costs, or to such extent as may be deemed necesssary for the purpose of securing the satisfaction and payment of such amount and costs.

CLXXVI.

The attachment is to be made by seizure when the property is goods and chattels; by seizure or by prohibitory order when it is real estate;

Where the property shall consist of goods, chattels, effects, or other moveable estate, the attachment shall be made by actual seizure, and the bailiff or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof. Where the property shall consist of lands, houses, or other immoveable estate, the attachment may also be made by actual seizure, but it shall be in the option of the Court, if it shall think proper, instead of directing its officer to make seizure and assume possession of the property, to issue a written order prohibiting the sale, mortgage, gift, or other transfer thereof, and all persons from receiving or taking the same by purchase, gift, or otherwise howsoever, and also prohibiting all ryots or cultivators and other tenants and occupiers of the land from paying their rents to any person or persons whomsoever, until the further order of the Court; with permission in the meantime to pay their rents into Court, to the treasurer or other proper officer who may be authorized to receive or grant receipts for the same. Where the property shall consist in whole or in part of debts, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made in all cases by a written order of the Court, prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof until such further order. Where the property shall consist in or whole in part of money standing in the name of the Defendant or to his account, and in deposit in any Court of Justice or office of Government, or of interest on Government paper, the attachment shall be made by a notice to such Court or office requesting that the money or interest may be held, subject to the further orders of the Court by which the notice may be issued.

by prohibitory order only when it is debts;

by notice when it is money in deposit in a Court of Justice or Government office.

CLXXVII.

When the attachment is by prohibitory order, how the order is to be made known.

In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to the same lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court House; and if the lands, houses, or other immoveable property are situated beyond the limits of the town of Calcutta, a copy of the written order shall also be fixed up in the cutchery of the collector of the zillah in which the lands, houses, or other immoveable property may be situated. In the case of debts, the written order shall also be fixed up in some conspicuous part of the Court House, and copies of the written order shall be sent by post to each individual debtor. And in the case of shares in the capital or joint stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court House, and a copy of the order shall be sent to the manager, secretary, or other proper officer of the company.

CLXXVIII.

All private alienations of property under attachment to be null and void.

After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property or shares attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends to the Defendant or Defendants, during the continuance of the attachment, shall be null and void.

CLXXIX.

The Court may direct money or bank notes to be paid to the Plaintiff,

or other attached property to be made over to him at a reasonable price,

or sold by public auction.

In all cases of attachment under the preceding articles, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes, or a sufficient part thereof, shall be paid over and delivered to the party or parties applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be transferred and delivered to the party or parties applying for execution of the decree, if he or they shall be disposed to accept the same in satisfaction or part satisfaction of the amount decreed, and costs, at the market value or such price as the Court may deem fair and reasonable; or that any part of the property so attached shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party or parties.

CLXXX.

Where the property consists of debts or real estate a manager may be appointed.

Where the property attached shall consist of debts due and owing to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable estate or property, it shall further be competent to the Court to appoint a manager of the said estate or property, with power to sue for and compound for the debts, and to collect the rents or other receipts and profits, or to raise money by mortgage or conditional sale of the land or other immoveable property, and to make and execute such deeds or instruments in writing as may be necessary or requisite for the purpose, and to pay and apply the same rents, profits, or receipts, or money so to be raised, towards the payment and satisfaction of the amount of the decree and costs; and in any case in which a manager shall be appointed, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

CLXXXI.

Attachment to be released after full satisfaction of the decree.

When full satisfaction shall be made of the amount decreed and costs, with all charges and expenses which may be incurred by the said attachment, or the same shall be otherwise paid and satisfied by the Defendant or Defendants, the attachment shall be forthwith released; and if the Defendant or Defendants shall desire that due intimation shall be given of such release, the order for the release of the attachment shall, at his or their expense, be proclaimed and intimated in the same manner as herein-before prescribed for the proclamation of the attachment.

Of Claims to attached Property.

CLXXXII.

How claims and objections to sale of attached property are to be investigated.

In the event of any claim being preferred to or objection offered against the sale of lands or any other real or personal property which may have been attached in execution of a decree, or under and by virtue of any order for sequestration which may be passed before judgment, as not belonging to the Defendant or Defendants, and consequently not liable to be sold in execution of a decree against him or them, the Court shall, subject to the proviso contained in the next succeeding article, proceed to investigate the same in the same manner and with the like powers as if the claimant had been originally made a Defendant to the suit, and also with such powers, as regards the summoning of the original Defendant or Defendants, as are contained in Articles CLXXI. and CLXXII. And if it shall appear to the satisfaction

of the Court that the land or other real or personal property so advertised to be sold in execution of the decree was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, or that being in the possession of the party himself at such time, it was so in his possession not on his own account, or as his own property, but on account of or in trust for some other person or persons, the Judge shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other real or personal property advertised to be sold in execution of the decree was in possession of the party against whom execution is sought, as and for his own property, and not for or on account of any other person or persons, or was in the possession of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, the Court shall pass an order disallowing the claim, and shall direct the decree to be executed. The order which may be passed by the Court under this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

CLXXXIII.

Claims and objections should be preferred at the earliest opportunity.

The claim or objection shall in all cases be preferred or made at the earliest opportunity to the Court that shall have ordered the attachment; and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding article; provided that if it shall appear that the preferring or making of the claim or objection has been designedly and unnecessarily delayed, with a view to obstruct the ends of justice, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular suit.

Of Sales in Execution of Decrees.

CLXXXIV.

Sales to be by public auction; exception as to Government paper.

Sales in execution of decrees shall be conducted by the proper officer of the Court, and shall in all cases be made by public auction in manner herein-after mentioned, except where the property to be sold shall consist of Government securities; and with respect to such securities, it shall be competent to the Court to authorize its officer, or any other person whom it may think proper to appoint, to sell and dispose of the same through a broker at the market rate of the day, and, if the endorsement of the party in whose name any such security is standing shall be required to transfer the same, to endorse such security thus "A.B. by C.D. by order of" (as the case may be), and in the meantime, until such sale, to receive any interest which may become due thereon, and to sign receipts for the same; and any endorsement which shall be made as aforesaid shall be as effectual to pass the said securities, and to give a good title to the holder thereof, and any receipt which shall be signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or signed by the party himself or his constituted Attorney.

CLXXXV.

How other property taken in execution must be sold.

In all cases of intended sale, whether of moveable or immoveable property, in execution of any decree or other judicial process, where the property shall not consist of Government securities, and in all sales of Government securities, when the Court shall direct that the same be sold by public auction, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold, including the jummah of the estate when the property to be sold is an estate paying revenue to Government, or any portion of any such estate, and of the amount for the recovery of which the sale is ordered, shall be made in the current language of the country, and at Calcutta it shall also be made in the English language, at least thirty days before the appointed day of sale, exclusive of the day of sale, and of the date on which the procla-

mation may be ordered. Such proclamation shall be made, in Calcutta, in the mode that has been usual in the case of sales by the sheriff, and at other places in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification to the same effect shall be affixed in some conspicuous place in the Court of the Judge who shall have ordered the sale, and also in the Court of the Zillah Judge, where the Judge who ordered the sale is subordinate to the Zillah Judge. When the attachment shall have taken place at some beyond the limits of the ordinary original jurisdiction of the High Court, the written notification shall also be affixed in some conspicuous place within the town or village in which the attachment may take place, and the cutcherry of the collector, and also in the Court of the local moonsiff.

CLXXXVI.

Nothing but the right title and interest of the Defendant guaranteed to the purchaser.

In all cases of a public sale of property in execution of a decree, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land or other property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree or other process in execution of which the sale is made.

CLXXXVII.

The process for attachment and sale may in certain cases be issued simultaneously.

The usual process for attachment and sale in such cases, when the property to be attached consists of goods, chattels, or other personal estate other than debts, may either be issued successively or simultaneously, as the Judge directing the sale may in each instance think proper; but no sale shall in any instance take place without a previous proclamation for the period specified in Article CLXXXV.; and any material irregularly in the sale which may be established on investigation to the satisfaction of the Court by whom the sale may have been ordered, shall be sufficient to invalidate the sale, provided that an application objecting to the sale on the ground of such irregularity be made to the Court by the party objecting thereto, either in person, or by Attorney or Vakeel, within one month after the sale.

CLXXXVIII.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

If no such application as is mentioned in the last preceding article be made within one month after the sale, or if such application shall be made and the objection shall be disallowed, the Judge shall pass an order confirming the sale; and in like manner, if such application shall be made, and if the objection be allowed, the Judge shall pass an order setting aside the sale for irregularity. The order which may be passed in either case, unless appealed from, and if appealed from then the order passed on the appeal, shall be final, and the party against whom the same has been given shall be precluded from bringing a fresh suit for establishing his claim.

CLXXXIX.

Certificate to be granted to the purchasers of land.

After the sale shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the Defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest, to all intents and purposes whatsoever, any law or practice to the contrary thereof notwithstanding.

CXC.

And delivery made of property sold as far as practicable.

Where the property sold shall consist of goods, chattels, or other personal estate of which seizure has been made, the same shall also be delivered to the purchaser or purchasers thereof; and where it shall consist of lands, houses, or other immoveable property, the right, title, and interest of the Defendant therein shall, as far as practicable, be delivered to the purchaser or purchasers thereof by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaining by beat of drum, at some convenient place or places, to the occupants thereof, that the right, title, and interest of the Defendant or Defendants therein has been transferred to the purchaser or purchasers.

CXCI.

Whenever a public sale is set aside as invalid under Article CLXXXVII., or on any account whatever, the purchaser shall be entitled to receive back his purchase money on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside price to be returned to purchaser.

Of the Execution of Decrees by Imprisonment.

CXCII.

When a Defendant under a decree is committed to prison in execution thereof, the Judge shall fix whatever monthly allowance he shall think sufficient for his subsistence, not exceeding per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court, or of the gaol where the defendant may be in custody, by monthly payments in advance, on or before the 1st day of each month; the first payment to be made on the day of imprisonment for such portion of the current month as may remain unexpired.

Subsistence-money of a Defendant in gaol how fixed and furnished.

The blank in this article is left to be filled up by the local government.

CXCIII.

A Defendant will be released at any time on the decree being fully satisfied, or at the request of the person or persons at whose instance he may have been imprisoned, or on such persons omitting to pay the allowance as above directed, for the space of twenty-four hours after it has become due; and further, his imprisonment on account of the decree which occasioned it shall not, in any case, exceed two years.

Imprisonment for debt limited to two years.

CXCIV.

Sums disbursed by a Plaintiff for the subsistence of a Defendant in gaol shall be added to the decree, and shall be recoverable from his property under the ordinary rules; but the Defendant shall not be detained in custody or arrested on account of such disbursements.

Subsistence-money to be added to amount of decree.

CXCV.

Any person in confinement under a decree who is not entitled to the benefit of any Act for the relief of insolvent or bankrupt debtors in India, may at any time procure his enlargement by making an application to the Judge to that effect, and furnishing in writing a full and fair account of all his property of whatever nature, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, and of the places respectively where such property is to be found, and moreover assigning the whole of such property to such person as the Court may direct, or such part thereof as may be sufficient for the satisfaction of the decree. In such case the Judge shall cause the Plaintiff to be furnished with a copy of the account of the Defendant's property, and call on him within a reasonable period, to be fixed by the Judge, to make proof of any fraudulent concealment or misrepresentation made by the Defendant; and on his failing to make such proof within the period specified shall cause the Defendant to be set at liberty.

Application may be made for release from confinement on a surrender of the whole of the debtor's property.

CXCVI.

But if the Plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Judge that the Defendant, for the purpose of procuring the enlargement without satisfying the decree, wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith, the Judge shall, at the instance of the Plaintiff, either retain the Defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if he shall think proper, send the Defendant to the Magistrate to be dealt with according to the provisions of Clause 193 of the Penal Code.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally on account of his fraud.

CXCVII.

Though the Defendant be released, his property is liable for the decree.

A Defendant once enlarged shall not be again be imprisoned on account of the same decree except under the operation of the last preceding Article, but his property will continue liable, under the ordinary rules, to attachment and sale in satisfaction of the decree until the same shall be fully made.

CXCVIII.

Attaching creditor to be first paid out of property attached.

Whenever property is attached in execution of a decree, on the application of any person or persons, such person or persons shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

Of the Enforcement of a Decree out of the Jurisdiction of the Court by which it was passed.

CXCIX.

The decrees of any Courts may be executed beyond their own jurisdiction by other Courts.

A decree which cannot be enforced or executed within the jurisdiction of the Court by which it was passed may be enforced or executed within the jurisdiction of another Court, in the manner following:

CC.

How application is to be made for such execution.

The party may apply to the Court which shall have passed such decree for a copy thereof, and also for a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such decree that may have been passed. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate to be furnished; and the same shall be signed by the Judge or one of the Judges of the Court, and sealed with the seal of the Court.

CCI.

Judge certifying decree, how to describe himself.

If such Court shall be the principal Civil Court of original jurisdiction in the district, the Judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

CCII.

Certificate to pass from Chief Court of the district to Chief Court where it is to be executed.

If the Court shall not be the principal Civil Court of original juridiction in the district, the copy of the judgment, and of the order for execution, if any, and the certificate of the Judge, shall, without delay, be transmitted to the principal Civil Court of original jurisdiction in the district; and the Judge or one of the Judges of such Court shall issue a certificate under his hand and the seal of the Court, verifying the signature of the Judge of the Court in which the decree shall have been given to the documents above mentioned; and in such certificate the Judge signing the same shall describe himself as the Judge or one of the Judges of the principal Civil Court of the district, and shall also name the Court and the district.

CCIII.

Court applied to for execution, how to proceed.

All copies and certificates, which may be furnished by or transmitted to the principal Civil Court of original jurisdiction in the district in which such dereee shall have been given, shall be transmitted by such Court without delay to the principal Civil Court of original jurisdiction in the district in which the party may wish to have the decree enforced or executed; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless the Court to which such documents shall be transmitted shall, under any peculiar circumstances, to be specified in an order, require the same.

CCIV.

Decree or order transmitted, to be

The copy of any decree, or of any order for execution, when filed in the Court to which it shall be transmitted, for the purpose of being executed or enforced as aforesaid, shall for such purpose have the same effect as a decree or

order for execution made by such Court, and may be enforced or executed by such Court, or any Court subordinate thereto, to which it may entrust the enforcement or execution thereof. executed as that of the Court.

CCV.

When application shall be made to any of the said Courts to enforce or execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to enforce or execute the same, according to its own rules in the like cases; and the last-mentioned Court shall take cognizance of and punish all wrongful acts or irregularities done or committed in enforcing or executing such decree; and all persons disobeying or obstructing the enforcement or execution of any such decree shall be punishable by such last-mentioned Court in the same manner as if the said decree had been pronounced by such Court. Execution how to be enforced by Court applied to.

CCVI.

An appeal shall lie from any order of a Court for enforcing or executing the decree of another Court, in the same manner, and subject to the same rules as if the decree had been originally passed by the Court making such order. What appeal from orders for execution under this Act.

CHAPTER IV.

Of Contempts and Disobedience of Orders.

CCVII.

Any Judge or Court of Justice shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their Courts, and to punish the persons committing them, as therein authorized. Disobedience of Orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior or insulting him, or neglecting his duty.

CCVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause. Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CCIX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clanse applicable thereto. Contempt of lawful Authority under Chapter IX.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants."

CCX.

Provided that Principal Sudder Ameens and Moonsiffs shall not exceed the powers of punishment conferred on them respectively as Judges of subordinate Criminal Courts, in fixing the measure of punishment for any of the offences referred to in the three last proceding articles; and provided also, that when a person has been sentenced to punishment under the provisions of the last preceding article for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge or Court of Justice to remit the punishment, on the submission of the offender to the order or requisition of such Judge or Court of Justice. Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the Offender.

The Articles under the head of Contempts are a repetition, *mutatis mutandis*, of the Articles contained under Chapter VIII. of the Code of Criminal Procedure, and are here inserted for the guidance of the Civil Judge.

CHAPTER V.

Reference to Arbitration.

CCXI.

Reference on application of the parties.

If the parties to a suit are desirous that the matters in difference between them shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

CCXII.

Application how to be made.

The application shall be made by the parties in person, or through one of the Attorneys or Vakeels of the Court, specially authorized in that behalf by an instrument in writing, which shall be presented to the Judge at the time of making the application, and shall be filed with the proceedings in the cause.

CCXIII.

Appointment of arbitrators may be made by Court at the desire of parties.

If the parties cannot agree with respect to the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, or having accepted it shall refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint some proper person or persons to be the arbitrator or arbitrators, as the case may be.

CCXIV.

Order of reference.

The Court shall fix such time as it may think reasonable for the delivery of the award, and shall by an order under its seal, in which the time so fixed shall be specified, refer to the arbitrator or arbitrators the matters in difference in the suit between the parties.

CCXV.

When the reference is to two or more, the order shall provide for difference of opinion.

If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint their own umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree as to any of these particulars, as the Court itself may determine.

CCXVI.

Power to Court to direct arbitration.

If on the day mentioned in the summons, or at any subsequent hearing of the cause, it shall appear to the Judge that the matter in dispute between the parties consists wholly or in part of matters of mere account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of Court, or to some other proper person whom the Judge may think fit to appoint, upon such terms, as to costs and the remuneration of the arbitrator, or otherwise, as the Judge shall think reasonable.

CCXVII.

Court may determine particular facts or points of law.

If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law or fact fit to be decided by the Court, it shall be lawful for the Judge to decide such question of law or fact, and his decision thereupon shall be taken and acted upon by the arbitrator as conclusive.

CCXVIII.

If action be commenced by one party to a deed of arbitration, Court may stay proceedings.

Whenever the parties to any deed or instrument in writing shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any suit against the other party or parties, or against any person or persons claiming through or under him or them, in respect of the matters so agreed to be referred or any of them, it shall be lawful to the Court in which the suit is brought, on application by the Defendant or Defendants at his or their first appearance before the Judge, in obedience to any summons that may be issued in such suit, upon being satisfied that no sufficient reason exists why such matters cannot be or

ought not to be referred to arbitration according to such agreement as aforesaid, and that the Defendant was at the time of the commencement of such suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make an order for staying all proceedings in such suit, on such terms as to costs or otherwise as to such Court may seem fit: provided always, that any such order may at any time thereafter be discharged or varied as justice may require.

CCXIX.

Powers of arbitrators.

Upon any reference by an order of Court, whether compulsory or by consent, the arbitrator or arbitrators and umpire shall have all the like powers as the Court would have in the like circumstances; and the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators, or umpire, or the parties, may desire to have examined, as the Court is authorized to issue in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators, or umpire, during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the arbitrator or arbitrators, or umpire, as they would incur for the same offences in suits tried before the Court; provided, that the arbitrator or arbitrators, or umpire, shall report the order, with the reason for making it, to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order.

CCXX.

Extension of time for making award.

In cases where the arbitrators or umpire shall not have been able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award if it shall think proper. In any case in which an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

CCXXI.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

If, in any case of reference to arbitration by an order of Court, the appointed arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court, on the application of the parties, or any of them, to appoint a new arbitrator or arbitrators, or umpire, in the place or stead of the person or persons so dying, or refusing or becoming incapable to act; and where two arbitrators are at liberty by the terms of the order of reference to appoint an umpire and do not appoint an umpire, then and in every such instance any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven clear days after such notice shall have been served no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid, upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this article, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

CCXXII.

Award how to be submitted to Court.

When a final award in a cause shall be made, either by the arbitrators or umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause.

CCXXIII.

Arbitrator may state special case.

It shall be lawful for the arbitrator or arbitrators and umpire, upon any reference, by an order of Court, whether compulsory or by consent of parties, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

CCXXIV.

Power to send back to arbitrator.

In any case where reference shall be made to arbitration as aforesaid, the Court shall have power at any time and from time to time to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the same arbitrator or arbitrators or umpire, upon such terms as to costs and otherwise as to the said Court may seem proper.

CCXXV.

Judgment to be pronounced in terms of the award.

If the Court shall not see cause to remit the matters referred for reconsideration in manner aforesaid, it shall pronounce judgment conformably to the award, unless the same shall be set aside, or to its own opinion on the special case if the award shall have been submitted to it in the form of a special case, and the decree shall be carried into execution in the same manner as other decrees of the Court.

CCXXVI.

Applications to set aside the award.

All applications to set aside any award made on a compulsory reference, or a reference by consent of the parties, shall be made within ten days after the same has been submitted to the Court; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, judgment shall be pronounced as mentioned in the last preceding article, and such judgment shall be final between the parties.

CHAPTER VI.

Of Proceedings on Agreement of Parties.

How Questions may be raised for the Decision of a Civil Court by any Persons interested.

CCXXVII.

Questions of fact, or of law or equity may be raised by agreement for the decision of any Court having Jurisdiction.

Parties interested, or claiming to be interested, in the decision of any question or questions of fact, or law or equity, may enter into an agreement which shall not be subject to any stamp duty, that upon the finding of a Judge, in the affirmative or negative of such question or questions of fact, or of law or equity, a sum of money fixed by the parties, or to be determined by the Judge, shall be paid by one of the parties; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts specified in the agreement. Where the agreement is for the delivery of some property, moveable or immoveable, or for the doing or performing, or the refraining to do or perform any particular act or acts, the estimated value of the property to be delivered, or to which the act or acts specified may have reference, shall be stated in the agreement.

CCXXVIII.

The agreement to be filed and numbered as a cause.

The agreement may be filed in any Court having jurisdiction in the matter, with the proper officer, and when so filed shall be numbered and registered as a cause between some or one of the parties interested, or claiming to be interested, as Plaintiffs or Plaintiff; and the others or other of them as Defendants or Defendant; but it shall not be necessary to issue any process for summoning the Defendant.

CCXXIX.

Parties to be subject to the Court's jurisdiction.

After the agreement shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and shall be bound by the statements therein.

CCXXX.

Hearing and disposal of the case.

The case shall be set down for hearing as an ordinary suit; and if the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels,

or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question or questions of fact or of law or equity stated therein, and that the same is or are fit to be tried or decided, he shall proceed to record and try, or hear the same, and deliver his finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon his finding or deciding upon the question or questions of fact or of law or equity, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Of Special Cases for the Opinion of the High Court.

CCXXXI.

Special case may be stated by any persons interested.

Persons interested or claiming to be interested in any question as to the construction of any Act of Parliament, or any Regulation of the Bengal Code, or Act of the Council of India, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter or thing, may, with the consent of a Judge of the High Court, concur in stating the same in the form of a special case for the opinion of the Court; and all executors, administrators, and trustees may concur in such case.

CCXXXII.

What it is to contain.

Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby, and shall be signed by the parties or their Advocates, Attorneys, or Vakeels.

CCXXXIII.

To be filed and numbered as a cause.

The special case shall be filed with the proper officer of the Court, and shall be numbered and registered as a cause between some or one of the parties interested or claiming to be interested as Plaintiffs or Plaintiff, and the others or other of them as Defendants or Defendant; but it shall not be necessary to issue any process for summoning the Defendants or Defendant.

CCXXXIV.

Parties thereto to be subject to Court's jurisdiction.

After the special case shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and such of the parties as are legally competent to bind themselves, shall, for the purposes of such special case, be bound by the statements therein; and the parties who are not legally competent to bind themselves shall also be bound by the statements therein, if the Court shall think proper so to direct, after taking such precautions as may be deemed necessary for protecting the rights of such parties.

CCXXXV.

Hearing and disposal of the case.

The special case shall be set down for hearing as an ordinary suit, and the Court, after hearing the parties, their Advocates or Vakeels, shall proceed to determine the questions raised therein, or any of them, and to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and every such declaration of the Court shall have the same force and effect as such declaration would have had, and shall be as binding to the same extent as such declaration would have been, if contained in a judgment pronounced in a contested suit. Provided that, if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

CHAPTER VII.

Of Appeals.

Appeals from Final Decrees.

CCXXXVI.

In what cases Appeals shall lie from decisions of Judges, Principal Sudder Ameens, and Moonsiffs.

An appeal shall lie, as herein-after provided, from the decisions of the Judge, the Principal Sudder Ameen, and of the Moonsiff, in all suits in which the property, or possession, or right of occupancy of land or other real property, or the right to receive rent or profit issuing out of land or other real property, or the right to hold land or other real property exempt from the payment of rent or revenue, or anything in the nature thereof, or the right to hold land or other real property subject to the payment of a fixed annual sum on account of rent or revenue, or anything in the nature thereof, or the right to any benefits, liberties, or privileges derived out of or affecting any landed or other real property, or the right to receive or collect any customary or other payments or gratuities on any account whatsoever, or the title to any office, or to any trust or special privileges, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question; and in all suits in which the right of inheritance from, or succession to, any person, or the validity of any marriage, divorce, will, or authority to adopt, or of any decree, bequest, or limitation under any will or settlement, or the condition or *status* of any person, in respect of relationship, religion, caste, or otherwise, or the custody or guardianship of any person, may be disputed; and in all suits for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage; and in all suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

CCXXXVII.

When it shall not lie.

An appeal shall also lie from all other decisions of the Judge, the Principal Sudder Ameen, and Moonsiff, except in suits in which the amount claimed does not exceed the sum of fifty rupees.

CCXXXVIII.

When the appeal from the Principal Sudder Ameen and Moonsiff shall be to the Zillah Judge, and when to the High Court.

In suits in which the amount claimed, or the value of the property claimed, does not exceed the sum of one thousand rupees, the appeal from the decision of the Principal Sudder Ameen, or Moonsiff, as the case may be, shall, except as herein-after provided, be to the Zillah Judge; in suits above that sum, to the High Court at Agra. And in suits in which there is no specification of the estimated value of any property, or of any sum of money by way of damages, the appeal from the decision of the Principal Sudder Ameen shall be to the High Court.

CCXXXIX.

The decision of the Zillah Judge in appeal is final.

The decision of the Judge in appeals from the decision of the Principal Sudder Ameen, or Moonsiff, shall be final; *provided, however, that it shall* be competent to the Judge, at the time of deciding an appeal from the judgment of a Principal Sudder Ameen or Moonsiff, to record his opinion, certifying in his judgment his reasons for the same, that the case is one for revision by the High Court, and when he shall have so certified, the High Court shall admit a special appeal from the decision of the Zillah Judge, in the event of either of the parties making application to that effect.

CCXL.

In original suits the appeal from the Zillah Judge and from the Moonsiff of Agra shall be to the High Court.

The appeal from the decisions of the Zillah Judge, and from the decisions of the Moonsiff of Agra, in original suits, shall be to the High Court at Agra.

CCXLI.

An appeal lies from Judges of the High Court exercising original jurisdiction to the High Court in its appellate capacity.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

CCXLII.

In all cases of appeal from decisions of the Courts of original jurisdiction mentioned in the last preceding article, the Appellate Court shall consist of a greater number of Judges than the Court which passed the decision appealed from. And in all cases whatsoever if there should be a difference of opinion among the Judges of the Appellate Court the decision shall be according to the opinion of the majority; and if the opinions of the Judges are equally divided, the decision of the Lower Court shall be affirmed.

How the Appellate Court is to be constituted.

Decision in all cases of appeal.

How Appeals are to be preferred.

CCXLIII.

The appeal shall be made in the form of a memorandum as herein-after prescribed, which may be presented in the Appellate Court, or in the Court in which the decision objected to was passed for transmission to the Appellate Court. In either case the memorandum must be presented within the times herein-after specified, unless the appellant shall, by a petition to the Appellate Court, show sufficient cause for not having presented it within such limited periods; that is to say, within thirty-one days if the appeal be to the Zillah Judge, or be to the High Court from a decision of a Court of original jurisdiction constituted by one or more of its own Judges, or from a decision of the Moonsiff of Agra, and within ninety-one days if the appeal be to the High Court from the decision of a Zillah Judge, Principal Sudder Ameen, or Moonsiff other than the Moonsiff of Agra; the days to be reckoned in all the cases as immediately following and exclusive of the day on which judgment was pronounced.

Appeal to be preferred by a memorandum to be filed within specified time.

CCXLIV.

An application for an extension of the time for presenting a memorandum of appeal may be made directly to the Appellate Court, or through the intervention of the Lower Court, at the option of the applicant. If the application for extension of time be made to the Lower Court, that Court shall record the reasons assigned for the application, and shall transmit a copy of its proceedings to the Appellate Court.

Time may be extended by an application.

CCXLV.

Every memorandum of appeal shall set forth concisely, and under distinct heads, grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. But the appellant shall not be tied down to the objections set forth by him in his memorandum of appeal.

What the memorandum is to contain.

The memorandum of appeal shall be in the following form, or to the following effect—

Form of memorandum.

Memorandum of Appeal.

(*Name, &c. as in Register.*) Plaintiff.
(*Name, &c. as in Register.*) Defendant.

[*Name of Appellant*] Plaintiff [*or* Defendant] above named appeals to the High Court at Agra [*or* Zillah Court at *as the case may be*], against the decree of the Moonsiff, or Principal Sudder Ameen of [*or as the case may be*], in the above cause, dated the day of ; for the following among other reasons.

CCXLVI.

If the memorandum of appeal be presented in the Court in which the decree objected to was passed, such last-mentioned Court shall forthwith forward the same to the Appellate Court, with an endorsement thereon of the date on which it was presented.

Memorandum to be forwarded to the Appellate Court.

CCXLVII.

Within one month from the date on which the memorandum of appeal shall be presented in the Lower Court, or one month from the date on which intimation shall be received by the Lower Court from the Appellate Court, that

What proceedings to be forwarded to the Appellate Court, and when.

the memorandum of appeal has been presented in the Appellate Court, unless the Appellate Court shall think proper to enlarge the time, and then within such enlarged time, the Judge of the Lower Court shall, except as provided in the next succeeding article, certify under his hand and the seal of his Court the record duly made up and authenticated, including authenticated copies of all his own material proceedings in the cause, and the original depositions, exhibits, and every original paper read in the cause, together with the written statements, if any, that may have been presented by the parties, or any of them, and received and recorded by the Judge, and shall transmit the record so made up to the Appellate Court. Previous to transmitting the above-mentioned papers to the Appellate Court the Judge of the Lower Court shall cause true and faithful copies of all the originals to be made out and authenticated by the proper officer of his Court, and deposited in the Court in lieu of the originals. The copies shall be records of the Court, and shall be received in evidence in any other Court in the same way as originals. In cases where any original deposition or other original proceedings or matter whatsoever shall have been previously entered in a book, which may likewise contain other proceedings in other distinct cases, or any other matter, so that such original papers cannot be transmitted to the Appellate Court without the other proceeding or matters, the Judge of the Lower Court, within the time and in the manner before directed, shall certify a true and authentic copy of such original papers, and that the original of each copy so transmitted is entered in such book. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings of the Court, the copy shall have the force and effect of the original, and the Judge shall transmit a copy of it to the Appellate Court, and shall in like manner certify that the original, after due search, cannot be found. A memorandum of all expenses which may be incurred in the preparation of copies of papers or otherwise, in or about the making up and transmitting the record, shall be forwarded therewith to the Appellate Court, and shall be considered costs in the cause.

CCXLVIII.

In certain appeals to the High Court the proper officer to attend in the Appellate Court with the original record of the case.

In appeals to the High Court from the Courts of original jurisdiction constituted by one of more of its own Judges, and in appeals from the Principal Sudder Ameen and Moonsiff to the Zillah Judge, the proper officer shall attend in the Appellate Court, from time to time as may be required, with the original record of the proceedings in the cause. In appeals to the High Court from the Moonsiff of Agra, the original record shall be transmitted to the High Court.

Of staying and executing Decrees under Appeal.

CCXLIX.

When and on what terms execution of decree may be stayed.

When any party or parties appealing is or are directed to pay any sum of money, or to perform any duty, or when the decree is for the possession of land or any other property, real or personal, the Court whose judgment is appealed from shall and is hereby empowered to award that its judgment shall be carried into execution, or that sufficient security shall be given for the performance of such judgment; provided always, that where the Court of original jurisdiction shall think fit to order the judgment to be executed, security shall be taken from the other party or parties for the due performance of such order or judgment as may be passed in the Court of Appeal. But this decision shall itself be subject to appeal.

Of Procedure in Appeals from final Decrees.

CCL.

How the appeal is to be entered.

When a memorandum of appeal shall have been presented in or transmitted to an Appellate Court, the Clerk (or proper officer) of the Appellate Court shall endorse thereon the date of presentment if it was presented in the Appellate

Court, or the date of receipt if it was transmitted from the Lower Court, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals.

CCLI.

The register shall be kept in the form contained in the schedule (B.) hereunto annexed; and a certified copy of the register, under the seal of the Court, shall be received in evidence in all Courts of Justice in India.

Form of the register.

CCLII.

It shall not be necessary in any Court of Appeal to take any security for costs, but it shall be in the discretion of every such Court of Appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer.

Court of Appeal may, at its discretion, require security for costs from appellant.

CCLIII.

A day shall be fixed by the Appellate Court for the hearing and disposal of the appeal; which day shall not be earlier, in cases in which a record of the suit shall be transmitted by the Lower Court, than forty-two days from the day on which the record may have been received in the Appellate Court, and shall not be earlier, in cases appealable to the High Court, when the officer is required to attend the Appellate Court with the original record of the suit, than twenty-one days from the presentment of the memorandum of appeal, but shall otherwise be as early, in all cases, as can be conveniently fixed, with a due regard to the state of business in the Court; the days to be reckoned in all the cases as exclusive of the day of hearing, and of the day on which the record may have been received, or the memorandum of appeal presented, in the Appellate Court. Notice of the day which has been fixed for the hearing of the appeal shall be sent by the proper officer of the Appellate Court to the proper officer of the Lower Court from the decree of which the appeal has been preferred, and shall be served on the appellant and respondent, in the same way as herein-before provided for in respect to the service of a summons. The notice to the appellant shall contain an additional intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, either in person or by an Attorney or Vakeel of the Appellate Court, his appeal will be dismissed for want of prosecution. And the notice to the respondent shall contain an intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence.

Day to be fixed for hearing the appeal.

CCLIV.

On the day in that behalf mentioned in the notices, and unless the Court shall otherwise direct, from day to day, until the cause is called on, the parties, appellant and respondent, shall be in attendance in the Appellate Court, in person or by an Attorney or Vakeel of the Court, duly empowered in manner herein-before mentioned, to represent them in all matters relating to the prosecution or defence of the appeal.

The parties to be in attendance on day so fixed.

CCLV.

If on the day fixed for the hearing of the appeal, or on any other day subsequent thereto on which the cause may be called on, the appellant shall not appear in person, or by an Attorney or Vakeel of the Court, the appeal shall be dismissed for default. If the appellant appears in person, or by an Attorney or Vakeel, and the respondent shall not appear in person, or by Attorney or Vakeel, the appeal shall be heard *ex parte* in his absence.

Consequences of non-appearance.

CCLVI.

Where an appeal is dismissed for default, an intimation of the dismissal shall be sent to the Court of original jurisdiction, and the costs of preparing copies of papers, and making up and transmitting the record, may be realized from the appellant, under an order of that Court, to be enforced in the same manner as a decree of Court.

When an appeal is dismissed, intimation to be sent to the Lower Court.

CCLVII.

In all cases in which an appeal shall be dismissed for default of prosecution, it shall be competent to the appellant to apply within reasonable time to the

How an appeal dismissed for

default may be restored.

Appellate Court, for the re-admission of his appeal. The application shall be accompanied with a certificate from the Court of original jurisdiction, that the costs mentioned in the preceding article, when ordered to be realized from the appellant, have been fully paid and satisfied; and if the Appellate Court shall think proper to grant such application, a day shall be thereupon fixed for the hearing of the appeal, and a fresh notice shall be issued to the respondent, to be served in the same way as the first notice, and with the like additional intimation as is herein-before provided; but it shall not be necessary to issue or serve any notice on the appellant.

CCLVIII.

The Appellate Court, how to give judgment.

The Appellate Court, after hearing the cause, shall proceed to give its judgment in the same manner as herein-before prescribed in regard to the judgment of Courts of original jurisdiction, for confirming, or reversing, or modifying and altering the decree of the Lower Court, as the Appellate Court shall think proper.

CCLIX.

No decision to be reversed for irregularity.

No decision shall be reversed or altered, nor shall any case be referred back to the Court of original jurisdiction, on account of any error, defect, or irregularity not affecting the merits of the case.

CCLX.

When a case may be remanded by Appellate Court.

If the Court of original jurisdiction shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Court of Appeal essential to the rights of the parties, and the decree of the Lower Court shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remit the case to the Lower Court, and cause the papers in the suit, together with a copy of the decree in appeal, to be transmitted to such Lower Court, with directions to proceed in the investigation of the merits of the case, and pass a decree therein.

CCLXI.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Court of original jurisdiction, except as provided in the preceding clause.

CCLXII.

When the Appellate Court may dispose of a case though the Lower Court has decided on other grounds.

When there is sufficient evidence upon the record of the Lower Court to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

CCLXIII.

When the Appellate Court may call for fresh evidence.

It shall not be competent to the parties in an appeal to produce additional evidence, whether of exhibits or witnesses; but if it appears that the Lower Court refused to admit competent evidence, or if the Appellate Court itself requires the production of exhibits or witnesses, as necessary to enable it to pronounce a satisfactory judgment, or if any other substantial cause demands a deviation from the ordinary rule, the Court may allow additional exhibits to be received, and the same and other witnesses to be examined; provided that whenever this power is exercised, the reasons for exercising it be recorded on the proceedings by the Appellate Court.

CCLXIV.

How additional evidence is to be taken.

Whenever additional evidence is permitted to be received, it shall be competent to the Court of Appeal to take such evidence before itself, or to require the Lower, or any other Court, or to empower any person, to take such evidence; and it shall also be competent to the Court of Appeal to prescribe the mode by which such evidence shall be taken; and the Court of Appeal shall be at liberty to proceed by all or any of the modes aforesaid.

CCLXV.

Points to be defined.

In all cases where additional evidence is permitted to be taken, the Court shall define the point or points to which the evidence is to be confined, and record the same in the minutes of the proceedi[redacted]

CCLXVI.

Powers of Appellate Court.

The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the cause, examining the parties or their Attornies or Vakeels, and awarding costs, or otherwise, as are herein-before contained in regard to Courts of original jurisdiction.

CCLXVII.

How the judgment of the Appellate Court is to be delivered. In what language it is to be written.

The judgment of the Appellate Court shall in all cases be pronounced in open Court, and, after being written out, shall be signed by the Judge or Judges. The judgment shall be written out in the English language; and where that language is not the language in ordinary proceedings before the Court, the judgment shall be translated into the languages so being in such ordinary use, and the translation shall be signed by the Judge.

CCLXVIII.

What the decree is to contain.

The decree of the Appellate Court shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and description of the parties appellant and respondent, the memorandum of appeal, a list of any additional exhibits that the Appellate Court may have allowed to be produced, and the names of any witnesses that it may have allowed to be examined. It shall also contain an exact copy of the ordering part of the judgment, or a translation thereof in the language in ordinary use in proceedings before the Court. The decree shall be sealed with the seal of the Court, and signed by the Judge or Judges who passed it, and copies shall be furnished to the parties in the same manner as herein-before provided for in regard to the decrees of Courts of original jurisdiction.

CCLXIX.

A certified copy of the decree to be transmitted to the Lower Court.

A copy of the decree, certified by the Clerk or proper officer of the Appellate Court, and sealed with the seal of the Court, shall be transmitted to the Clerk or proper officer of the Court of original jurisdiction which passed the first decree in the suit appealed from, and shall by him be filed with the original proceedings in the cause; and an entry of the judgment of the Appellate Court shall be made in the original register of the suit.

CCLXX.

How to be executed.

Application for execution of the decree of an Appellate Court shall be made to the Court of original jurisdiction which passed the first decree or order appealed from, and shall be enforced and executed by the Court which passed the first decree or order appealed from, in the manner and according to the rules herein-before contained for the enforcement and execution of original decrees or orders made by such last-mentioned Court.

Appeals from Orders.

CCLXXI.

From what orders appeals shall lie.

Appeals shall lie from the orders of Civil Courts as follows:—

1st. In all cases whatsoever where the order is for the punishment of a contempt committed in the presence of the Court, except when the Court which has passed the order is one of the Courts of original jurisdiction constituted by a Judge or Judges of the High Court.

2d. In all other cases whatsoever, unless otherwise specially provided for, if the decree in the suit be appealable.

3d. In all other cases, unless otherwise specially provided for, whether the decree in the suit be appealable or not, provided that the person against whom the order has been passed is not a party to the suit.

It will be observed that when the decree in the suit is not appealable, there will be no appeal from an order passed against a party to the suit, unless the order be for the punishment of a contempt committed in the presence of the Court.

CCLXXII.

Court to which the appeal should be made.

The appeal from an order shall always be made to the Court to which the decree in the suit in which order may be passed is appealable. If the order

be passed in a suit in which the decree it not appealable, or in a judicial proceeding which cannot properly be titled as of any suit, the appeal from the order of a Moonsiff, other than the Moonsiff of Agra, or Principal Sudder Ameen, shall be made to the Zillah Judge, and the appeal from the order of a Zillah Judge, or of the Moonsiff of Agra, shall be made to the High Court.

CCLXXIII.

The appeal not to stay proceedings.

The appeal shall not in any case stop the proceedings in the Lower Court.

Of Procedure in Appeals from Orders.

CCLXXIV.

Procedure, how it differs from the procedure in appeals from decrees.

The procedure in appeals from orders shall be in all respects the same as in appeals from final decrees, except as herein-after provided.

1. The register shall be kept in the form contained in the Schedule (C.) hereunto annexed

2. The memorandum of appeal shall in all cases be presented in the Court in which the order objected to was passed within five days immediately following, and exclusive of the day on which the order was pronounced.

3. Where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, the memorandum of appeal shall be accompanied with a list of the papers or depositions of which the appellant desires that copies should be transmitted to the Appellate Court.

4. The memorandum of appeal shall be transmitted to the Appellate Court within eight days from the date of presentment; and where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, authenticated copies of the order appealed against, and of the papers and depositions mentioned in the list accompanying the memorandum, shall be transmitted to the Appellate Court with the memorandum of appeal.

5. At the expiration of twenty days after the presentment of a memorandum of appeal in a case appealable to the Zillah Court, and thirty days after its presentment in a case appealable to the High Court, from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, and ten days in a case appealable to the High Court from an order of a Court of original jurisdiction constituted by one or more of its own Judges, the case shall be set down for hearing in the Appellate Court, and if the Appellant does not appear on any day thereafter that the case may be called on for hearing, it shall be struck out of the file; but the Appellate Court shall have power to restore the case to the file, if sufficient cause to its satisfaction for so doing be shown within a reasonable time.

6. It shall not be necessary for the Appellate Court to call for any further papers, unless it shall think proper.

7. It shall not be necessary to give any notice to the respondent.

8. The judgment may be delivered orally, and reduced to writing in the language of the Court, by an officer of the Court, or otherwise as the Court may think proper in each particular case.

CHAPTER VIII.

Review of Judgment.

CCLXXV.

Cases in which a party may apply for a review of judgment.

Any persons considering themselves aggrieved by a decree of any Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a Zillah Judge in appeal, from which no special appeal shall have been admitted by the High Court—or by a decree of the High Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council,—and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed

against them—may apply in person or by Attorney or Vakeel for a review of judgment by the Court which passed the decree. The application shall be made within three months from the date of the decree, but the Courts are nevertheless authorized to admit applications for a review after the period above mentioned, provided that the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the Court to which an application for a review may be presented shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if on the contrary it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court to which the application may have been presented shall grant the review, and its orders in either case, whether for rejecting the application or granting the review, shall be final.

Within what time the application should be made.

The order of the Court for granting or refusing the review is final.

CCLXXVI.

Provided that if the Court to which the application for a review of its judgment has been presented be the High Court, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering his order or opinion upon the same, it shall not be competent to any other Judge or Judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the High Court must be made to the Judge or Judges that passed the decree.

CCLXXVII.

In all cases in which an application for a review of judgment may be granted by any Court, the Court shall give such order, in regard to the summoning of the absent party or parties and hearing of the cause, as it may deem proper in the circumstances of the case.

Whenever a review is granted the parties are to be summoned.

CCLXXVIII.

The Principal Sudder Ameens and Moonsiffs, except the Moonsiff of Agra, shall at the close of each month send to the Judge of the Zillah a list of the cases in which they may have admitted a review of judgment, with a statement of the grounds on which the review has been admitted, and the Zillah Judge and the Moonsiff of Agra shall in like manner, at the close of each month, send to the High Court a list of the cases in which they may have admitted a review of judgment, together with the grounds on which the review has been admitted, and the Judge shall at the same time transmit to the High Court any lists which he may have received from the Principal Sudder Ameens and Moonsiffs of cases in which they may have admitted a review of judgment, together with such remarks as he may think proper thereon.

Abstract statements of reviews admitted to be forwarded to Superior Courts.

Date of Application for Summons.	No. of Suit.	Plaintiff.			Defe	
		Name.	Trade or Quality.	Residence.	Name.	Trade o

Date of Memorandum, and where presented.	No. of Appeal.	Appellant.	
		Name.	Trade or Quality.

SCHEDULE A. referred to in the foregoing scheme of Procedure.

Court of the of holden at

Register of Civil Suits in the year 18 .

...ent.		Claim.			Appearance.			Judgment.			Appeal.		Execution.					Return of Execution.		
...ality.	Residence.	Particulars.	Amount or Value.	When the Cause of Action accrued.	Day for Parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or Amount.	Date of Appeal.	Judgment Appeal.	Date of Application.	Date of Order.	Against whom.	For what, Amount, Money.	Amount of Costs.	Amount paid into Court.	Amount.	Means of other Remedy than Payment or Arrest, and Date of every Return.

SCHEDULE B. to the foregoing scheme of Procedure.

High Court of Madras [*Bombay*] [or Zillah Court at]

Register of Appeals from Final Decrees in the year 18 .

	Respondent.			Decree appealed from.				Appearance.				Judgment.		
...ndence.	Name.	Trade or Quality.	Residence.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for Parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

Criminal Courts of Original Jurisdiction.

I.

The Courts for the trial of offences, other than the High Court, shall be the following:— Criminal Courts other than the High Court.

COURTS OF SESSION;

COURTS OF THE MAGISTRATES;

SUBORDINATE COURTS; viz.:—

Subordinate Criminal Courts of the 1st Class.

Subordinate Criminal Courts of the 2d Class.

II.

First Assistants to the Magistrate, and Principal Sudder Ameens, shall be Judges of Subordinate Criminal Courts of the 1st Class. Who are to be Judges of the Subordinate Criminal Courts.

Second Assistants to the Magistrate, and Moonsiffs, shall be Judges of Subordinate Criminal Courts of the 2d Class.

III.

The Session Courts, the Courts of the Magistrates, and Subordinate Criminal Courts shall be denominated after the zillah, or city, or division in which they are respectively established.* Criminal Courts how to be denominated.

IV.

The appointment, suspension, and removal of the Judges of the Session Courts, of the Magistrates, and of the Judges of the several Subordinate Criminal Courts, shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass. Appointment, suspension, and removal of Criminal Judges.

V.

Each Criminal Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:— Declaration on entering upon office.

" I, *A.B.*, appointed of the Court of do
" solemnly declare that I will faithfully perform the duties of my office
" to the best of my ability, knowledge, and judgment."

VI.

Each Criminal Court is to use a seal such as shall be prescribed by the Government. Seal.

VII.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Session Judges and Magistrates and Judges of the Subordinate Criminal Courts as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to those several Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council the Judges of the Criminal Courts shall make the appointments to the several offices of their respective establishments. Ministerial officers.

VIII.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts. No person excepted from jurisdiction by reason of place of birth or of descent,

IX.

High Court and Session Court to have jurisdiction over all offences.

The High Court and Session Court shall have jurisdiction in respect of all offences punishable under the Penal Code.

X.

Exclusive jurisdiction as to certain offences.

The High Court and Session Court exclusively shall have jurisdiction in respect of—

1st. Offences entered in Schedule A. of the Code of Procedure as triable by those Courts only.

2d. The offences punishable under Clauses 364, 365, 366, and 390 of the Penal Code, when the value of the property which is the subject of the offence exceeds 500 rupees.

3d. Offences however punishable under any clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise.

4th. Offences however punishable under any clause of the Penal Code, except Clause 119, charged against the following public servants, as such public servants:

Every head ministerial officer, every record keeper, and every Nazir of a Court of Justice, and every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact;

Every head gaoler;

Every darogha of police;

Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract, on behalf of the Government; or to investigate, or to report on any matter affecting the pecuniary interests of the Government; or to make, authenticate, or keep any document relating to the pecuniary interests of the Government.

5th. Offences however punishable under any clause of the Penal Code, charged against the following public servants, as such public servants:

Every juryman;

Every arbitrator to whom any cause has been referred by a Court of Justice.

XI.

Magistrates, their jurisdiction as to offences.

Magistrates are empowered to try all offences not assigned to the exclusive jurisdiction of the High Court or Session Court.

XII.

Subordinate Criminal Courts, their jurisdiction as to offences.

Subordinate Criminal Courts of the first and second classes are empowered to try offences entered in Schedule A. of the Code of Procedure as triable by those Courts respectively.

XIII.

Session Court not to pass sentence in cases punishable with death.

In cases tried by the Courts of Session in which the Defendant is convicted of any offence which, by the Penal Code, is punishable with death, the Court shall not pass judgment, but shall refer the case to the High Court, which shall pass judgment thereon.

XIV.

Session Court may direct transfer of a criminal case.

It shall be competent to a Session Judge, on cause shown, to direct the transfer of any criminal case from any Criminal Court to any other Criminal Court of equal or superior jurisdiction in his district.

XV.

Magistrates, their penal jurisdiction.

Magistrates are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding two years, or to fine exceeding 1,000 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

XVI.

Judges of the Subordinate Criminal Courts of the 1st Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding one year, or to fine exceeding 200 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

Subordinate Criminal Courts, 1st class, their penal jurisdiction.

XVII.

Judges of the Subordinate Criminal Courts of the 2d Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding three months, or to fine exceeding 50 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

Subordinate Criminal Courts, 2d class, their penal jurisdiction.

XVIII.

In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Clauses 51 and 52 of the Penal Code in awarding the period of imprisonment in default of payment of the fine; provided, however, that in such cases decided by the Magistrate and Subordinate Criminal Courts, the period of imprisonment awarded in default of payment of the fine shall in no case exceed one fourth of the period of imprisonment which such Magistrate or Subordinate Criminal Court is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Imprisonment in default of payment of fine.

XIX.

It shall be competent to the Government to direct that any Subordinate Criminal Court shall be authorized to hold the preliminary inquiry into cases triable by the Session Courts, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes.

Subordinate Criminal Courts may be empowered to prepare cases for trial before the Session Court.

Proposed Code of Procedure for the Courts of Criminal Judicature in the North-western Provinces of the Presidency of Bengal.

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CHAPTER I.

Preliminary Rules.

I.

No institution stamp fee, or deposit.

No stamp duty or fee shall be required on the institution of any criminal case, or on the entry of any appeal from the decision or order or any Criminal Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Criminal Court, except such fees or charges as may be set forth in tables to be prepared as provided in the next succeeding article.

II.

Table of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Criminal Courts comprised in any zillah by the Session Judge and Magistrate of the zillah under the direction of the High Court, and for the High Court by the Judges thereof. A copy of the table of fees and charges so prepared, which may be applicable to any Criminal Court, shall, after they shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him than such fees or charges as may be set forth in such table

III.

All complainants and witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their preferring complaints or giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Complainants and witnesses to be examined without oath, affirmation, or warning.

IV.

No person whatever shall, by reason of place or birth, or by reason of descent, be excepted from the rules of Criminal Procedure.

No person excepted from Criminal Procedure by reason of place of birth or of descent.

CHAPTER II.

Obtaining a Summons on Warrant.

V.

Where an offence has been committed, or is suspected to have been committed, the proceeding, in order to compel the party known or suspected to have committed such offence to appear for the purpose of preliminary inquiry concerning the same, may be by summons or arrest.

Proceeding to compel appearance.

VI.

The proceeding by summons may be in the cases and shall be subject to the rules herein-after contained.

Summons.

VII.

The proceeding by arrest may be either,—

Arrest.

1. By warrant;
2. Or by private person without warrant;
3. Or by an officer without warrant.

VIII.

A summons, or a warrant of arrest, may be obtained on such complaint as is mentioned in the next succeeding article.

Complaint.

IX.

Every complaint made before a Magistrate or darogha of police, in order to the issuing of a summons or a warrant against a person accused of any offence, either directly or on suspicion, if not written shall be forthwith reduced into writing, and shall be signed by the complainant, and also by the Magistrate or darogha of police issuing the summons or warrant.

To be reduced into writing and signed

X.

Upon such complaint duly made before a Magistrate, he shall, in case it appear to him that there is sufficient ground for proceeding, issue his summons or warrant for causing the person accused to appear before himself or some other Magistrate or Court having jurisdiction; and if in the judgment of such Magistrate there be no sufficient ground, he shall dismiss the complaint, whether it be direct or on suspicion only.

Magistrate, how to proceed on complaint.

XI.

Upon such complaint duly made before a darogha of police, he shall, in case it appear to him that there is sufficient ground for proceeding, and that the immediate apprehension of the accused is necessary to the ends of justice, issue his summons or warrant for causing the person accused to appear before himself; and if in the judgment of such darogha there be no sufficient ground, or the immediate apprehension of the accused is not necessary to the ends of justice, he shall abstain from issuing any process, and shall submit the complaint for the orders of the Magistrate.

Darogha of police, how to proceed on complaint.

XII.

Every summons issued by a Magistrate or darogha of police to a person so accused shall be in writing, under the hand and seal of the Magistrate or darogha of police issuing it; shall show his office; that the summons is made on a complaint duly made of an offence committed, or suspected to have been committed; shall be directed either to the person accused by such complaint, or some

Summons, what it is to contain, and how to be directed.

other person; if directed to the person accused it shall, if issued by the Magistrate, direct him to appear before the Magistrate issuing such summons, or some other Magistrate or Court as aforesaid, at a time and place specified; and if issued by a darogha of police, to appear before such darogha at a time and place specified; and if directed to any other person it shall require such other person to summon the person accused so to appear.

XIII.

Summons, how to be served.

If such summons be directed to the person accused, it may either be served on him personally or left with some adult member of his family.

XIV.

Notwithstanding summons, warrant may issue in certain cases.

A Magistrate or darogha of police may, notwithstanding such summons, either before the appearance of the person accused, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person in all cases in which he might so have done had no such summons been issued.

XV.

Warrant when grantable for an offence committed beyond local jurisdiction.

A Magistrate of one district or darogha of one division may grant a warrant for the apprehension of a suspected offender within that district or division, as the case may be, in respect of an offence of which the law takes cognizance, committed in a different district or division, or on the high seas, or in a foreign country.

XVI.

Where an offence may be investigated and tried in one of two or more jurisdictions.

When a person or several persons shall be accused of the commission of any offence, by reason of any things which have been done, or by reason of any thing or things which have been done, and consequence or consequences which have occurred, every such offence may be inquired of and determined, and every such offender prosecuted and punished, in any district or jurisdiction in which any such thing shall have been done, or any such consequence shall have occurred.

XVII.

Abetment.

The previous abetment of an offence, wherever such abetment may have taken place, may be inquired of and determined in any place or district in which that offence may be inquired of and determined, and by any Court which has jurisdiction to try that offence, as though the previous abetment had been committed at the same place at which that offence was wholly or partly committed.

XVIII.

Abetment.

Provided, that such abetment may be inquired of and determined in any district within which the abettor has done anything for abetting the commission of that offence.

XIX.

Offence committed on boundary.

Where any offence shall be committed on the boundary or boundaries of two or more districts or divisions, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or division and completed in another, every such offence may be inquired of and determined in any of the said districts or divisions in the same manner as if it had been actually and wholly committed therein.

XX.

During journey, &c.

Where any offence shall be committed on any person or on or in respect of any property in or upon any coach, cart, or other carriage, or upon any beast of burden employed in any journey, or shall be committed on any person or on or in respect of any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be inquired of and determined in any district or division through any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had been actually committed in such district or division; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river,

canal, or navigation, shall constitute the boundary of any two districts or divisions, such offence may be inquired of and determined in either of the said districts or divisions through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually been committed in such district or division.

XXI.

Receiving, &c. stolen property.

Whosoever shall fraudulently receive, or fraudulently have in possession, any stolen property, knowing the same to be stolen property, may be prosecuted and punished in any district or place in which he shall have or shall have had such stolen property in his possession, or in any district or place in which any person by whose offence that property came to be stolen property may be prosecuted and punished.

XXII.

Unlawfully receiving property.

Whosoever shall commit any offence by unlawfully receiving or having in possession any moveable property, knowing the same to have been unlawfully taken, obtained, or converted, may be prosecuted and punished in any district or place in which he shall have or shall have had such property in his possession, or in any district or place in which any person who unlawfully took, or obtained, or converted such property, may be prosecuted and punished for any offence committed thereby.

XXIII.

Escape from lawful custody under sentence.

Any offender who shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice, or by virtue of a commutation of such sentence, may be prosecuted and punished either in the district where he shall be apprehended and retaken, or in the district in which the said offence shall have been committed.

XXIV.

Returning from transportation or banishment.

Any offender who shall return from transportation or banishment, the term of such transportation or banishment not having expired, and his punishment not having been remitted, may be prosecuted and punished either in the district or place where he shall be apprehended, or in that in which he was formerly tried.

XXV.

Forgery.

Any person who shall commit any offence by forgery, or by using as genuine any document which he knows to be forged or falsified by forgery, may be prosecuted and punished in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place.

XXVI.

Definition of certain terms.

In the preceding articles, and any other article of this Act, wherever the district or other place or the Court in or before which any offence is to be inquired of and determined, or any offence is to be prosecuted and punished, is mentioned, the term "inquired of" shall be deemed to comprise every proceeding preliminary to trial; the term "determined," to comprise trial, and every subsequent proceeding, including the punishment of the offender; and the terms "prosecuted and punished," to comprise every proceeding, whether preliminary or subsequent to trial, or upon such trial, unless in any such case there be something in the subject or context repugnant thereto.

XXVII.

What is a district, and what a division.

The local jurisdiction of the Magistrate of a zillah or district shall for the purposes of this Act be deemed a district; and the local jurisdiction of a Moonsiff or darogha of police be deemed a division; provided that nothing herein contained shall be held as authorizing a police officer, except under the special authority of the Magistrate, to inquire into any of the offences described in the provisions of the Penal Code specified in Article LXXXI.

CHAPTER III.

Of the Warrant and its Execution.

XXVIII.

Warrant to bear the name of grantor.

The warrant shall be in the name of the officer who grants it.

XXIX.

Form of warrant.

Every such waraant shall be in writing; shall be directed to some person or persons by name or by official description (and in the latter case, either to some particular officer, or to all or some one or more of that class or description); shall specify the person to be arrested by name or by such other description as may be sufficient to distinguish him; shall order that such person be arrested; shall specify the authority before whom such person after arrest shall be taken; shall state, as the cause of arrest, some offence committed or suspected to have been committed in respect of which the Magistrate or other officer has jurisdiction to issue such warrant; shall show the person who grants it to be a Magistrate or other officer authorized to issue such warrant; shall state the time of making it; show the place where it is granted, either by statement in the body or in the margin of the warrant; and be signed and sealed by the Magistrate or other officer who grants it.

XXX.

Warrant to several persons, jointly and severally.

A warrant directed to several persons jointly and severally may be executed by any one of them.

XXXI.

To several persons jointly.

A warrant directed to several persons jointly, without words excluding the execution by one or a part only of those mentioned, may be executed by any one or by a part only of them.

XXXII.

To a darogha or nazir.

A warrant directed to a darogha of police or to a nazir may be executed by any officer subordinate to such darogha or nazir respectively.

XXXIII.

Officers issuing a warrant may personally superintend its execution.

A Magistrate or other officer authorized to issue a warrant or other criminal process may attend personally for the purpose of seeing that the same be duly executed, and may adopt or direct any legal measures that may be necessary for the due execution thereof.

XXXIV.

Warrant directed to a person not an officer of police or nazir.

A warrant directed to any other person than an officer of police or the nazir of a Court is to be executed by that person; provided nevertheless, that any other person may, in the presence or out of the actual presence of one authorized to execute a warrant, aid him in executing the same, if the person so authorized be near at hand and acting in the execution of the warrant.

XXXV.

All persons bound to assist in certain cases.

Every person is bound to assist a Magistrate or police officer demanding his aid in the taking of an offender, preventing a breach of the peace, the suppression of a riot, or the taking of the rioters.

XXXVI.

Where a warrant of a Magistrate must be executed.

A warrant issued by any Magistrate must be executed (unless it be specially otherwise provided) within the jurisdiction of the Magistrate from whom it issued, or of the Magistrate by whom it has been duly endorsed for execution.

XXXVII.

Warrant endorsed in another jurisdiction.

In case any person against whom a warrant shall be issued by any Magistrate shall escape, go into, reside, or be, or be supposed to be, in any place out of the jurisdiction of the Magistrate granting such warrant, the Magistrate of the place into or in which such person shall escape, go, reside, be or be supposed to be, shall endorse his name on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant within the jurisdiction of the Magistrate who endorsed such warrant, and to apprehend and carry such person before the Magistrate who endorsed

such warrant, or before the Magistrate of the district where the offence was committed. In case such person be carried before the Magistrate who endorsed the warrant, and the offence with which he is charged is bailable in law, he shall be proceeded with in the manner herein-after mentioned in Article CXIX. or Article CLXXX. If the offence be not bailable, he shall be forwarded to the Magistrate of the district in which such offence was committed.

XXXVIII.

Warrant to be endorsed may be sent by post.

Provided that it shall be competent to a Magistrate issuing a warrant for the arrest of a person out of his jurisdiction to direct the warrant to the Magistrate of the district in which such person is, or is supposed to be, and to transmit the same by post. On the receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on such warrant, and enforce its execution in the same manner as if the warrant had originally issued from himself. On such person being apprehended, and carried before the Magistrate who endorsed the warrant, he shall be dealt with as provided in the last preceding article.

XXXIX.

Magistrates how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

If a person for whose apprehension a warrant has been granted by a Magistrate under the provisions of Article XV. is suspected of an offence committed in a different district, the Magistrate granting the warrant shall, unless he is authorized by any law to complete the inquiry himself, send the person arrested to the Magistrate of the district in which the offence was committed, or take bail for his appearance before such Magistrate if the offence of which he is suspected is bailable in law; and in all other instances the Magistrate shall report the case for the orders of the High Court.

XL.

Darogha how to proceed in such cases.

If the warrant under Article XV. shall have been granted by a darogha, the darogha shall send the person arrested to the Magistrate to whom such darogha is subordinate, unless the offence of which the person arrested is suspected shall have been committed in another division of the district in which the division of the darogha who granted the warrant is comprised; in such case the darogha who granted the warrant shall send the person arrested the darogha of the division in which such offence was committed.

XLI.

Where a warrant of a police officer must be executed.

A warrant issued by a police officer must be executed (unless it be otherwise specially provided) within the jurisdiction of the officer who issued it.

XLII.

When a warrant of arrest may be executed.

An arrest on a warrant for any of the offences specified in Schedule A. of this Code of Procedure as not bailable offences may be made on any day, and at any time of the day or night. It shall be at the discretion of the Magistrate to direct that an arrest on a warrant in any other case may be made on any day, and at any time of the day or night.

XLIII.

Warrant, how to be executed.

In making an arrest the officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by words or actions.

XLIV.

No unnecessary restraint.

After arrest the prisoner shall not be subjected to any more restraint than such as may be necessary to prevent his escape.

XLV.

Notification of purpose to act under the warrant.

One executing or attempting to execute a warrant of arrest is bound to notify to the person against whom such warrant is directed, that he purposes to act under the authority of that warrant.

XLVI.

Notification of substance of warrant.

An officer or other person executing a warrant of arrest must notify the substance of the warrant, and show the warrant, if sight of it be demanded.

XLVII.

Taking and refusing to give up a warrant.

If on a warrant being shown any person take hold of it, and illegally refuse to give it up to the officer or other person authorized to execute it, such officer or other person may retake it by force, provided he use no greater degree of violence than is necessary for the purpose.

XLVIII.

Resisting an endeavour to arrest.

If, after notice by one authorized by warrant to arrest another of his intention to arrest him, the person against whom such warrant is issued shall forcibly resist the endeavour to arrest him, the person so authorized is bound to use all such means as may be necessary to effect an arrest and prevent escape.

XLIX.

Breaking of outer door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any outer door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

L.

Officer, &c., breaking out to liberate himself.

An officer or other person having lawfully entered a dwelling house for the purpose of executing criminal process, or of arresting any person under any of these articles, may lawfully break out of such house when it is necessary for his own liberation; and any officer may lawfully break any outer or inner door or window of a dwelling house in order to liberate any officer or other person who, having entered for such purpose, is unlawfully detained within such dwelling house.

LI.

Breaking of inner door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LII.

Breaking open a zenanah or female apartment.

If information be received that a person accused of any offence for which a warrant may issue on complaint, has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused, and shall endeavour to ascertain, by the means of two respectable women unconnected with the family or with each other, whether the person against whom the warrant has been issued be really concealed in the zenanah; in which case, and if such person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, in the presence of two or more respectable residents of the place, break open the zenanah, and execute the process intrusted to him, giving notice at the same time to any women in the zenanah that they are at liberty to withdraw.

LIII.

Breaking of doors, &c. for offences not previously provided for.

It shall be at the discretion of the Magistrate to direct, in any particular case, that a warrant of arrest shall be executed as provided in Articles XLIX., LI., and LII., for any other offence than the offences for which a warrant may issue on complaint.

LIV.

Party arrested to be brought immediately to the authority mentioned in the warrant,

as soon as may be practicable.

After arrest made, the officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested to the Magistrate or other authority mentioned in the warrant.

LV.

If, after arrest made, circumstances render it impracticable to bring the person arrested immediately before the Magistrate, the officer or other person executing the warrant shall detain the person arrested in custody in the meantime, and bring him before the Magistrate as soon as his doing so shall become seasonably practicable.

LVI.

No threat, promise, or caution, as to disclosure by party arrested.

No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence; and no such officer or other person shall after such arrest prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

CHAPTER IV.

Of Arrest without Warrant.

LVII.

Arrest on view.

A police officer or other person who sees any offence committed for which a warrant may issue on complaint, may, without warrant, arrest the offender.

LVIII.

On complaint, or finding with stolen goods.

A police officer may, without warrant, arrest of his own authority a person against whom a reasonable complaint of an offence for which a warrant may issue on complaint is made, or who may be found with stolen goods in his possession.

LIX.

A proclaimed offender: hue and cry.

A police officer, or other person, may, without warrant, arrest a proclaimed offender, or a person against whom a hue and cry has been raised of his having been concerned in a recent offence.

LX.

A party liable to arrest concealing himself.

If a person liable to arrest without warrant under the foregoing rules shall enter into and conceal himself in a dwelling house, the person who might otherwise have arrested shall take such precautions as may be necessary to prevent the escape of the accused, and send immediate information to the Magistrate or darogha of police; but no house shall be broken into for the purpose of arresting any person without a warrant.

LXI.

Breach of the peace.

A police officer may, of his own authority, interpose for the prevention of a breach of the peace committed or attempted to be committed in his view; and in the event of disobedience or resistance may, without warrant, arrest the offender.

LXII.

Obstruction of a police officer in his duty.

A police officer may apprehend any person who obstructs him while in the execution of his duty, and carry him before the Magistrate, or before the head officer of the police division.

LXIII.

When it is not necessary to notify cause of arrest.

It is not necessary to notify the cause of arrest where the person is in the actual commission of any offence, or where fresh pursuit is made after any such person, who, being disturbed, makes his escape.

LXIV.

Party arrested to be taken immediately before the proper authority

A police officer or other person, having arrested a person for an offence, is to take or send him before the Magistrate or the head officer of the police division, without unnecessary delay.

LXV.

Arrest for an offence committed in the presence of a Magistrate.

Where any offence is committed in the presence of any Magistrate, he may by word of mouth command any other person to arrest the offender, and may thereupon commit him, or, at his discretion, where the offence is bailable, may admit him to bail.

CHAPTER V.

Of Escape and Re-taking.

LXVI.

Person arresting may retake on escape. and deal with

If a person lawfully arrested on a criminal information shall escape or be rescued, it shall be lawful for the person from whose custody such prisoner

the party arrested as on original taking.

so escaped or was rescued to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and on any day, and at any time of the day or night, and to deal with him as he might have done on an original taking.

LXVII.

May adopt the same measures as on original taking.

In order to retake any person, within the meaning of the last preceding article, the person so making fresh pursuit as therein is mentioned may adopt the same measures as he might have done on the original taking.

CHAPTER VI.

Of Search Warrant.

LXVIII.

When grantable by a Magistrate.

Whenever a Magistrate, having jurisdiction in respect of a supposed offence, shall consider that the production of any thing or things will be essential to the conduct of an inquiry into such offence, he may grant his warrant to search for such thing or things, and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in any dwelling or dwellings, place or places. In such case the Magistrate shall, if he think right, specify in his warrant the dwelling or dwellings, place or places, or part or parts thereof, to which only the search shall extend.

LXIX.

How to be directed.

The Magistrate shall direct his warrant to the police darogha within whose jurisdiction the dwelling or dwellings, place or places, required to be searched, are situated, or to any other public and registered officer of police to whom the Magistrate may think fit to commit the execution of that duty. A warrant directed to a darogha may, in the event of the darogha not being able to proceed in person, be executed by any officer subordinate to such darogha, above the rank of burkundaz.

LXX.

When a Magistrate may require a Magistrate of another district to issue a search warrant.

A Magistrate may require the Magistrate of another district to issue a search warrant in any case in which he may issue such warrant himself.

LXXI.

When a Magistrate may grant a search warrant out of his jurisdiction.

In cases of emergency, a Magistrate may grant his warrant for the search of any thing or things concealed, or supposed to be concealed, in a dwelling or dwellings, place or places, out of his jurisdiction, the production of such thing or things being essential to the conduct of an inquiry into an offence committed within his jurisdiction. When a Magistrate grants a warrant under this article, he shall inform the Magistrate of the district in which the dwelling or dwellngs, place or places, to be searched, are situated.

LXXII.

Search warrant when grantable by a darogha.

Whenever a darogha shall consider that the production of any thing or things will be essential to the conduct of an inquiry into any offence which he is authorized to inquire into, he may grant his warrant to search for such thing or things in any dwelling or dwellings, place or places, within his division, which shall be specified in his warrant; and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in such dwelling or dwellings, place or places.

LXXIII.

How to be executed.

The darogha shall, if practicable, conduct the search in person; but if unable to proceed in person, shall direct his warrant to any police officer of his division above the rank of burkundaz.

LXXIV.

When a darogha may require a darogha of another division to issue a search warrant.

A darogha may require the darogha of another division, whether subject to the same Magistrate as himself or to the Magistrate of any other district, to issue a search warrant in any case in which he may issue such warrant himself.

LXXV.

The darogha, when not specially instructed by the Magistrate, shall transmit all representations made to him regarding the receipt or concealment of any thing or things the production of which is essential to the conduct of an inquiry into an offence, at or before the time when he proceeds to the search, for the information of the Magistrate, and for any orders which he may deem it necessary to issue on the subject.

Representations regarding anything for which search is to be made to be sent to Magistrate.

LXXVI.

The search shall be made in the daytime, except in cases of great emergency, and where the information is positive, and not on suspicion only, when it may be made either in the daytime, or in the night-time.

When the search is to be made.

LXXVII.

If the door be shut, the person charged with the execution of the warrant may proceed to break open the door, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of doors.

LXXVIII.

If the place ordered to be searched is a zenanah or female apartment in the actual occupancy of women, the officer charged with the execution of the warrant shall give notice to any women in the zenanah that they are at liberty to withdraw; and, after giving such notice, and allowing a reasonable time for the women to withdraw, such officer may enter the zenanah for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Breaking of a zenanah or female apartment.

LXXIX.

The search is to be made in the presence of three or more respectable inhabitants of the place in which the dwelling or dwellings, place or places searched may be situated, and such persons shall subscribe their names to the report made to the Magistrate; and the occupant of the house, or owner of the house, or some person in his behalf, shall in every instance be permitted to attend during the search.

Search to be made in the presence of witnesses. Occupant of the place searched may attend.

LXXX.

All property which is claimed as having been stolen, as well as all property suspected to have been stolen, found on persons accused of robbery or theft, or which is seized by police officers under suspicious circumstances, as also anything the production of which is essential to the conduct of an inquiry into an offence, shall be forwarded without delay, together with a despatch, to the Magistrate. A copy of the despatch being registered, the original is to be given to the officer charged with the conveyance of the property, to be delivered to the nazir, or other proper officer, on his arrival at the station of the Magistrate.

Property, &c. to be sent to the Magistrate.

CHAPTER VII.

Preliminary Inquiry by the Police.

LXXXI.

A darogha of police shall not inquire into any of the following offences punishable under the Penal Code, unless specially authorized by the Magistrate to do so, viz.:—

Offences into which the police officers may not inquire without special authority.

Offences under Chap. VIII., provided that it shall be competent to a darogha to apprehend and send to the Magistrate any person who may be found in his division in the commission of the offence punishable under Clause 150.

Offences under Chap. IX., except the offences punishable under Clauses 164, 166, 168, 171, 173, 175, and 182; provided that it shall be competent to a darogha to inquire into any offence under Chap. IX., committed in contempt of his own authority.

Offences under Chap. X., except the offences punishable under Clauses 201, 203, 204, and 205.

Offences under Chap. XI., Clauses 211, 216, 225, 226, 227, and 228.

Offences under Chap. XIII.

Offences under Chap. XIV., except the offences punishable under Clauses 257, 265, 267, 269, 270, and 273.
Offences under Chap. XV.
Offences under Chap. XVI.
Offences under Chap. XVII.
Offences under Chap. XVIII., Clauses 312, 313, 318, 325, 332, 333, 334, 335, 336, 337, 342, 347, 348, 350, 351, 352, and 358.
Offences under Chap. XIX., Clauses 369, 370, 373, 374, 384, 385, 387, 388, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, and 425.
Offences under Chap. XX., Clauses 453 and 454.
Offences under Chap. XXI.
Offences under Chap. XXII.
Offences under Chap. XXIII.
Offences under Chap. XXIV.
Offences under Chap. XXV.
Offences under Chap. XXVI.

LXXXII.

When the darogha may issue his warrant.

Upon complaint duly made before a darogha of police having jurisdiction in the case, against any person for committing any offence, other than the offences described in the provisions of the Penal Code specified in the last preceding article. and which offence is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for tht darogha to issue his warrant to apprehend such person, and to cause him to be brought before such darogha.

LXXXIII.

May issue summons instead of warrant.

Provided, that in all cases it shall be lawful for such darogha before whom such a complaint is made, instead of issuing his warrant in the first instance to apprehend the person so complained against, to issue his summons, recording his reason for so issuing his summons, directed to such person, requiring him to appear before such darogha.

LXXXIV.

When darogha shall issue summons.

Upon a complaint duly made before a darogha of police having jurisdiction in the case, against any person for committing any offence into which he is authorized to inquire, and which is punishable with imprisonment for a period not exceeding six months, the darogha shall issue his summons to such person, requiring him to appear before such darogha.

LXXXV.

When the head officer of police may stay issue of process.

In the event of its appearing to the darogha that for any special reason the issue of process for causing the attendance of the accused should be stayed until the case be reported for the orders of the Magistrate, such report shall be made without delay, and the issue of process against the accused in the meantime suspended. On the receipt of the darogha's report, it shall be at the discretion of the Magistrate, if he is of opinion that there are grounds for proceeding with the case, to direct the darogha to proceed with it, or to proceed with it as if the complaint had been made before himself.

LXXXVI.

Witnesses to be summoned.

Upon the issue of process for causing the attendance of the accused, the darogha shall at the same time issue summonses for the attendance of any persons who appear from the statement of the person making the complaint to be acquainted with the facts and circumstances of the case.

LXXXVII.

Darogha may proceed in person, or depute an officer to investigate.

Nothing contained in the foregoing articles shall be construed to prevent a darogha from proceeding in person, or deputing a fit person from among the officers acting under him, to ascertain on the spot the facts and circumstances of any case into which he is authorized to inquire.

LXXXVIII.

Police may pursue offenders into other jurisdictions.

It shall be lawful for the darogha or other police officer to pursue persons accused of the offences referred to in Article LXXXII. into the jurisdiction of other daroghas, whether subject to the same Magistrate as himself or to the Magistrate of any other district.

LXXXIX.

Examination of witnesses.

The examination of witnesses by the police shall be taken in the presence of the darogha, or, in the event of his absence, in the presence of any officer above the rank of burkundaz, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be signed by the person deposing, and transmitted to the Magistrate, as herein-after provided, under the signature of the police officer by whom the inquiry may have been made.

XC.

Police officers not to examine the accused.

It shall not be competent to a darogha or other police officer to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make.

XCI.

Inquiry by the police.

The darogha, or other police officer, shall complete the inquiry with as little delay as possible, and if the darogha himself have made the inquiry, he shall forward the accused to the Magistrate, under the custody of one or more burkundazes, provided the evidence is such as to warrant that course, and the offence be not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate of the district. If a subordinate police officer have made the inquiry, he shall submit his proceedings to the darogha, who shall then proceed as if he had made the inquiry himself.

XCII.

Accused not to be detained by the police beyond 48 hours, without special authority.

Provided, that it shall not be lawful for the darogha or other police officer to detain the accused in custody, without the special orders of the Magistrate, for a longer period than forty-eight hours; and provided also, that it shall be competent for a darogha or other police officer, on his being satisfied that there are grounds for believing that the accusation is well founded, to forward the accused to the Magistrate at any period of the inquiry before the expiration of forty-eight hours from the apprehension of the accused. The darogha shall forward with the accused a short despatch stating the offence for which the accused has been arrested.

XCIII.

Darogha how to proceed in cases of deficient evidence.

If it shall appear to the darogha that there is not sufficient evidence to warrant the transmission of the accused to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and submit his proceedings for the orders of the Magistrate.

XCIV.

Proceedings of the darogha, of what to consist.

In all cases, in submitting his proceedings to the Magistrate, the darogha shall forward the statement of the person complaining and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produceb efore the Magistrate. The darogha shall further state whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance.

XCV.

Bail.

Persons accused of the commission of any of the offences entered in the third column of Schedule A. as not bailable, shall not be admitted to bail, provided that there appear reasonable grounds for believing that such persons have been guilty of the offence imputed to them; but in all cases of persons accused of any other offences, if sufficient bail be tendered for appearance before the Magistrate, the darogha shall accept such ball, and immediately release the party apprehended.

XCVI.

When security for keeping the peace to be required.

In cases of manifest necessity, when the darogha may be apprehensive of danger to the public peace by the enlargement of a person arrested for rioting or other bailable offence, without security being taken for his peaceable conduct, the person so arrested shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace; and the surety or sureties shall execute a recognizance in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. In default of his furnishing the required security, the accused shall be forwarded under custody to the Magistrate.

XCVII.

Police to report all apprehensions.

The officers of police shall report to the Magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of the Magistrate.

XCVIII.

Bail not to be excessive. Terms of security.

The bail to be taken for appearance before the Magistrate, in pursuance of Article XCV. shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the Defendant before the Magistrate on or before a fixed day, to answer the complaint.

XCIX.

Prosecutors and witnesses to execute recognizance to appear before the Magistrate.

Prosecutors and witnesses, whose attendance may be necessary at the Criminal Courts, shall execute recognizances before the police officers, to appear before the Magistrate on a specific day, which shall be the day whereon the accused may be bound to appear, if he shall have been admitted to bail, or on the day on which he may be expected to arrive at the Magistrate's place of residence, if he is to be forwarded thither under custody. The police officer in whose presence the recognizance may be executed shall forward it with his report to the Magistrate, and shall deliver to the prosecutor or witness a despatch, which the prosecutor or witness shall be required to deliver in person to the Magistrate or the nazir of his Court, unaccompanied by any officer of police.

C.

Witnesses not to be subjected to restraint. Recusant witness may be forwarded in custody.

The police officers shall not subject witnesses to any restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any witness shall refuse to attend, or to execute the recognizance directed in the last preceding article, it shall be competent to the darogha to forward such witness under custody to the Magistrate.

CI.

By whom the powers of the darogha may be exercised in his absence or illness.

The powers to be exercised by the darogha under the foregoing rules shall be exercised in the event of his absence or illness, by the head police officer present at the police station above the rank of burkundaz.

CII.

Service of process issued by the police.

All processes in criminal cases cognizable by the police officers shall be served by the burkundazes at the police station, without any charge to the parties or witnesses.

CIII.

Penalty for taking unauthorized cognizance of offences. Magistrate may direct investigation at his discretion.

The police officers are strictly prohibited, on pain of dismissal from office, from taking cognizance of any of the offences described in the provisions of the Penal Code specified in Article LXXXI., except under the special orders of the Magistrate. But it shall be at the discretion of the Magistrate to issue such orders to the officers of police, in regard to the investigation of criminal cases, as he shall think proper, and such officer shall be bound to obey the orders of the Magistrate.

CIV.

How darogna is to proceed in regard to cases triable by the Subordinate Criminal Courts.

When a Subordinate Criminal Court has been authorized to receive cases coming within its jurisdiction on the report of a police officer, the darogha shall forward the accused and submit his proceedings to such Court, and shall bind over the prosecutor and witnesses to appear before the same.

CHAPTER VIII.

Of Contempts and Disobedience of Orders.

CV.

Disobedience of orders, &c. under Clause 149 of the Penal Code, how punishable.

Any Judge, or Court of Justice, or Magistrate shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their offices, and to punish the persons committing them as therein authorized.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.

CVI.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CVII.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Contempt of lawful authority under Chapter IX.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants." The rules of this Chapter of the Code of Procedure are confined to Judges, Courts of Justice, and Magistrates; the provisions of Clause 149 and of Chapter IX. of the Penal Code are more general; but it has been considered expedient to leave to the Government of India the extension of these or similar rules to other public servants.

CVIII.

Provided that no Magistrate or Judge of a Subordinate Crininal Court shall exceed his ordinary powers of punishment in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that where a person has been sentenced to punishment under the provisions of the last preceding article, for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge, Court of Justice, or Magistrate, to remit the punishment, on the submission of the offender to the order or requision of such Judge, Court of Justice, or Magistrate.

Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the offender.

CHAPTER IX.

Criminal Charges by the Advocate General.

CIX.

It shall be competent to the Advocate General of the Bengal Presidency, at his discretion, to file a criminal charge for any offence, in any Criminal Court; also to withdraw such charge, and to file another.

Advocate General may file criminal charges,

CX.

The rules relating to the description of the offence in the case of charges by the Magistrate shall be applicable to criminal charges filed by the Advocate General.

To follow the rules relating to charges.

CHAPTER X.

Prosecutions in certain Cases.

CXI.

Charges of offences punishable under Chapters V., VI., XI., and XVI. of the Penal Code shall not be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Governor General in Council, or by order of, or under authority from, a public officer empowered by the Governor General in Council to direct or authorize such prosecution, or unless instituted by the Advocate General.

Prosecutions for certain offences not to be instituted but under authority of Government, or of a duly empowered officer.

The offences are as follow:—

Chapter V. Offences against the state;
„ VI. Offences relating to the army and navy;
„ XI. Offences relating to the revenue;
„ XVI. Illegal entrance and residence into the territories of the East India Company.

CXII.

Prosecution for certain offences under Chapter IX. of the Penal Code not to be instituted but with the sanction of the public servants concerned.

In cases of contempt of the lawful authority of public servants, and other offences against public servants, as such, described in Chapter IX. of the Penal Code, except the offence described in Clause 186, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the public servants concerned, except when they are inferior ministerial servants, in which case the prosecution shall not be instituted but with the sanction of their official superiors.

CXIII.

For certain offences under Chapter X. of the Penal Code, but with the sanction of the authority before which the offence was committed.

In cases of offences against public justice, described in Clauses 190, 191, 192, 193, 194, 195, 196, and 197 of Chapter X. of the Penal Code, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the Court of Justice, Judge, or Magistrate, before which or whom, or against which or whom, such offence was committed.

CXIV.

Mode of proceeding in cases mentioned in the two last preceding articles.

When a Court of Justice, Judge, or Magistrate is of opinion that there is sufficient ground for bringing any person to trial on a charge of any of the offences referred to in the last two preceding articles, the Court, or Judge, or Magistrate, after making such preliminary inquiry as may be necessary, may send the case for investigation to the Magistrate, who shall proceed to inquire into the case, and pass such orders thereon as he may deem proper; provided that it shall be competent to the High Court or a Court of Session to charge a person for any such offence committed before it, or under its own cognizance, and to try such person upon its own charge.

CHAPTER XI.

Of preliminary Inquiry by the Magistrate in Cases triable by the High Court or Session Court.

Complaint and issuing of Process for causing the Attendance of the Accused.

CXV.

Magistrate may issue his warrant.

In all cases where a complaint shall be made before a Magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any of the offences specified in Schedule A. as triable exclusively by the High Court or Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or Court of Session, it shall be lawful for such Magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint; provided also, that in any case which is triable exclusively by the High Court or Court of Session under the provisions of Clauses 3, 4, and 5 of Article X. of the rules relating to the "Criminal Courts of Original Jurisdiction," the Magistrate shall proceed in the same manner as if the case had been triable by himself.

May issue a summons instead of a warrant.

In what cases he is to proceed as if the case had been triable by himself.

CXVI.

Postponement of issue of process.

If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the Magistrate to believe the charge well founded, and the offence be of the nature described in Article CXV., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

May dismiss the complaint.

CXVII.

It shall be at the discretion of the Magistrate, in issuing his warrant for the arrest of any party against whom a complaint has been made, to direct that if such party be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the party from custody. In the event of bail being given, the officer shall forward the recognizance to the Magistrate.

Magistrate may direct bail to be taken.

CXVIII.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Magistrate may dispense with the personal attendance of the accused.

CXIX.

Where any such person as is mentioned in Article XXXVII. or Article XXXVIII. shall be apprehended out of the jurisdiction of the Magistrate granting the warrant against him, and carried before the Magistrate who indorsed such warrant, the Magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the Magistrate granting the warrant, shall take bail of such person for his appearance before the Magistrate granting the warrant, release the person from custody, and forward the recognizance to the Magistrate granting the warrant.

Arrest on warrant indorsed by a Magistrate of another district.

CXX.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a Magistrate he cannot be found, the Magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the Magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this Article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Proclamation for an absconding party.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CXXI.

The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons, under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said Magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CXXII.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the Magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the Magistrate of another district, in order to its being executed out of the jurisdiction of the Magistrate who shall have issued the same.

CXXIII.

In what cases warrant in the first instance.

If the Magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CXXIV.

Refusing to answer, may be committed to custody.

If any person so summoned or brought before a Magistrate shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall in the meantime consedt to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal he may be dealt with according to the provisions of Article CVII. or Article CXIV.

Examination of Parties and Evidence.

CXXV.

Examination of the complainant and witnesses for the prosecution.

When a case is brought before a Magistrate in which a person is charged with an offence which is triable exclusively by the High Court or Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or Court of Session, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the Magistrate from examining the Defendant at any stage of the inquiry, as provided in Article CXXX.

CXXVI.

To be in the presence of the Defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the Defendant, and the Defendant shall be permitted to cross-examine them.

CXXVII.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a Prosecutor or Defendant in the case shall require it. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXXVIII.

It shall not be competent to the Magistrate to receive in evidence against the Defendant any written admission or confession of guilt, or any statement made by him to the darogha or other officer of police, and by him reduced into writing.

Magistrate not to receive any written admission or confession of guilt made to the police;

See Article XCI.

CXXIX.

Nothing contained in the last preceding Article shall prevent the Magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant.

but may receive evidence of a police officer as to unrecorded admission of guilt.

CXXX.

It shall be at the discretion of the Magistrate to examine the Defendant at any stage of the inquiry from the time of the Defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the Defendant either discharged, or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be.

Examination of Defendant.

CXXXI.

If the Defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the Magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

Magistrate how to proceed in case of confession.

CXXXII.

No influence, by means of any promise or threat, shall be used to any Defendant under examination to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

CXXXIII.

The examination of the Defendant, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the Defendant refuses to sign, his reason shall be stated in writing as he gives it, at the foot of the examination, and whether the Defendant signs it or not the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the Defendant's statement. No other attestation shall be necessary to render the examination available as evidence at the trial of the Defendant, and such attestation shall be admitted without proof of the signature to it, unless the trying Court shall see reason to doubt its genuineness.

Examination of the Defendant, how to be recorded.

Examination to be admitted as evidence on the attestation of the Magistrate.

CXXXIV.

The Defendant, on examination, may be committed or held to bail by the Magistrate for any offence which from the evidence he may appear to have committed.

Defendant may be detained for any offence committed by him.

CXXXV.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Any person attending may be detained for any offence committed by him.

CXXXVI.

It shall be at the discretion of the Magistrate to summon and examine any evidence that may be offered in behalf of the Defendant to answer or disprove the evidence against him.

Discretionary with the Magistrate to take evidence for the defence.

CXXXVII.

Witnesses for the defence.

The provisions of Articles CXXII., CXXIII., CXXIV., and CXXVII. shall be applicable to witnesses named in support of the defence.

Conditional Pardon.

CXXXVIII.

Magistrate may tender a pardon in certain cases.

In cases of murder, dakoity, robbery, thuggee, offences relating to coin, and forgery, as well as in cases of housebreaking and theft, attended with circumstances of aggravation, it shall be lawful for the Magistrate, recording his reasons for the same, to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery and theft) the mode in which the stolen property may have been disposed of.

CXXXIX.

When High Court or Session Court may direct the commitment of a person to whom a pardon may have been tendered.

It shall be competent to the High Court as a Court of original jurisdiction, to the Session Court, or to the High Court as a Court of reference, to direct the commitment of any person to whom a pardon may have been offered under the provisions of the last preceding article, should it appear that such person has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information.

CXL.

When High Court or Session Court may direct a tender of pardon.

In like manner it shall be competent to the High Court as a Court of original jurisdiction, or to a Session Court at the time of trial, and also to the High Court as a Court of reference, to instruct the Magistrate to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, with the view of obtaining his or their evidence on the trial.

CXLI.

High Court may revise proceedings when a pardon may have been tendered.

It shall be competent to the High Court to revise the proceedings of the Magistrates, in any case in which a pardon may have been tendered to any person, and to annul the orders passed on such proceedings, should it appear to the High Court that a pardon had been granted on insufficient grounds.

Bail.

CXLII.

Bail not to be taken for certain offences if proof of guilt.

When may be taken.

Where any person shall appear or be brought before a Magistrate accused of any of the offences entered as not bailable in Schedule A. of this Code of Procedure, such person shall not be admitted to bail, provided that there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the Magistrate, not be such as to raise a strong presumption of the guilt of the person accused and to require his committal, or such evidence shall be adduced on behalf of the person accused as shall, in the opinion of the Magistrate, weaken the presumption of his guilt, but there shall appear to the Magistrate in either of such cases to be sufficient ground for judicial inquiry into his guilt, the person accused shall be admitted to bail.

CXLIII.

When bail shall be taken.

Where any person shall appear or be brought before a Magistrate accused of any of the offences entered as bailable in Schedule A. of this Code of Procedure, he shall at once be admitted to bail.

CXLIV.

Where a Magistrate shall admit any person accused of any offence, or on suspicion thereof, to bail, a recognizance in such sum of money as the Magistrate shall think sufficient is to be entered into by the person so accused, and one or more sureties conditioned that such person shall attend during the preliminary inquiry, and, if required, shall appear at the then next session of the High Court or the Session Court, as the case may be, to answer the charge. Recognizance of accused and sureties.

CXLV.

If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused may be ordered by the Magistrate to find sufficient sureties, and in default may be committed to prison. Insufficient bail.

CXLVI.

If the accused cannot presently find sureties, he shall be admitted to bail upon his doing so at any time afterwards before conviction. Bail may be taken any time before conviction.

CXLVII.

After the recognizances shall have been duly entered into, the Magistrate, in case the accused shall have appeared voluntarily, or shall be in the custody of some officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the gaoler or other person having him in his custody, who shall thereupon liberate him. Discharge on bail.

CXLVIII.

Those who may have become bail for any person may discharge themselves by taking him and surrendering him before the Court by which he has been bailed, and he may thereupon be committed to prison by the said Court. How persons who have bailed may discharge themselves.

CXLIX.

In such cases it shall be competent to such Defendant to find new sureties. New sureties.

CL.

Whenever by reason of default of appearance of the party executing the personal recognizance the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty in the mode prescribed for the satisfaction of decrees of the Civil Court. Proceedings to compel payment of penalty by accused.

CLI.

Whenever by reason of default of appearance by the party bailed the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and, if no sufficient cause shall be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court, and if the penalty be not paid and cannot be recovered by such attachment and sale, and such surety or sureties shall be liable to confinement, by order of the Magistrate, in the civil gaol, during a period not exceeding six months. Proceedings to compel payment of penalty by sureties.

Warrant of Commitment.

CLII.

Every warrant of commitment shall be directed to some gaoler, keeper, or other officer or person having authority to receive and keep prisoners, either by his name or official description, and shall command the person to whom it is so directed to receive the prisoner and keep him until he be discharged in due course of law. Warrant of commitment, how to be directed, &c.

CLIII.

Warrant, what to contain.

The warrant (which must be drawn up before the party is sent to prison) shall set forth the name of the Defendant in full, if known; but if it be not known, then a description of his person, stating the refusal to tell his name; and shall state in substance the offence in respect of which the prisoner is charged, the authority of the committing officer, and the place of imprisonment.

CLIV.

With whom to be lodged.

The warrant of commitment shall be lodged with the gaoler, if he be in the gaol; and if he be not, with his deputy; and if he has no deputy, it may be lodged with any officer of the gaol then being in the gaol.

Adjournment.

CLV.

When Magistrate may adjourn the inquiry.

If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of witnesses for any time, it shall be lawful for the Magistrate, by a written order, from time to time to adjourn the inquiry, and to remand the person accused for such time as shall be deemed reasonable, not exceeding fifteen days; provided that the Magistrate may order such accused person to be brought before him at any time before the expiration of the time for which such accused person shall be so remanded, and the gaoler or other officer in whose custody he shall then be shall duly obey such order; provided also, that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the Magistrate may discharge him upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance at the time and place appointed for the continuance of such examination.

Discharge of the Defendant.

CLVI.

When Defendant to be discharged.

When a Magistrate finds that there are not sufficient grounds for putting the Defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Commitment, &c. of the Defendant for Trial.

CLVII.

When Defendant to be committed for trial.

The Defendant shall be sent for trial before the High Court, or before the Session Court, as the case may be, when evidence has been given before the Magistrate which appears to be sufficient to convict the Defendant of an offence which is triable exclusively by the High Court or the Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or the Court of Session.

CLVIII.

Copy of charge to be furnished to Defendant.

Witnesses for the defence on the trial.

As soon as the charge on which the Defendant is to be tried has been prepared, it shall be read to the Defendant, and a copy or translation of it shall be furnished to him. The Defendant shall then be at liberty to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the High Court or the Session Court, as the case may be. The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the Defendant is to be tried. This, however, shall not prevent a person committed from giving in a further list of witnesses, and having them summoned at any time between the commitment and the trial. The provisions of Articles CXXII. and CXXIII., so far as they relate to the compulsory attendance of witnesses, shall be applicable to witnesses named by the Defendant in the lists above mentioned.

CLIX.

When the preliminary inquiry is concluded the Defendant shall be entitled to copies of the depositions on the record of the same without delay, if he demands them a reasonable time before the trial. Copies of depositions to be furnished to Defendant.

CLX.

Upon the commitment of the Defendant to take his trial before the High Court or the Court of Session, as the case may be, the Magistrate shall issue a warrant of commitment, stating the offence in the same form as the charge. Warrant of commitment.

CHAPTER XII.

On the Charge.

CLXI.

When the Magistrate has resolved to send the Defendant before the High Court or Court of Session for trial, or put him on his trial before himself for any offence punishable under the Penal Code with imprisonment for a period exceeding six months, he shall make a written instrument under his hand and seal, declaring with what offence the Defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the Defendant be tried by the said Court on the said charge. In all cases sent for trial to the High Court or Court of Session the Magistrate shall send a copy of this instrument, with the proceedings, to the public prosecutor, where such officer has been appointed, otherwise to the Court before which the Defendant is to be tried. What the charge is to contain.

CLXII.

The charge shall describe the imputed offence as nearly as possible in the language of the clause of the Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause. How the offence is to be described.

CLXIII.

It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in the third chapter of the Penal Code, but every charge shall be understood to assume the absence of all such circumstances. Absence of General Exceptions under the Penal Code to be assumed.

CLXIV.

It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the Defendant shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor. Evidence as to General Exceptions.

CLXV.

Where the clause itself referred to in the charge contains an exception, not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the clause, without a distinct denial of the existence of such circumstances. Clause of the Penal Code containing an exception, not a General Exception.

CLXVI.

The charge may contain one or more heads.

Charges containing One Head.

CLXVII.

Where a charge contains one head only, the form shall be as follows, or to the same effect: Heads of charge.

Forms of Charge.

(*a*) I, A. [*name and office of Magistrate, &c.*], declare that there is hereby made against Z. the charge:

On Clause 109.

(*b*) That he has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th clause of the Penal Code, (*c*) and within the cognizance of the [*style of the Court*].

(*d*) And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

Where the Magistrate tries the case, there must be substituted for (*c*): within my cognizance; and *the words* "by the said Court" *in* (*d*) *may be omitted.*

To be substituted for (*b*):

On Clause 112 applied to Clauses 111 and 319.

2. That he has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th clause of the Penal Code, and, by committing such offence, has also committed an offence punishable under the 319th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has, by reason of the premises, become liable to cumulative punishment under the 112th clause of the Penal Code.

On Clause 129.

3. That he has committed the offence of rioting, and has thereby committed an offence punishable under the 129th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 138.

4. That he has, being a public servant, directly accepted from a party, for another party, a gratification, other than legal remuneration, as a motive for his, the said Z.'s, forbearing to do an official act, and has thereby committed an offence punishable under the 138th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 303.

5. That he has committed voluntary culpable homicide in defence, and has thereby committed an offence punishable under the 303d clause of the Penal Code, and within the cognizance of [*style of the Court*].

On Clause 306.

6. That he has previously abetted by aid the commission of suicide by a person in a state of intoxication, and has thereby committed an offence punishable under the 306th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 308.

7. That he has omitted what he was legally bound to do, with such knowledge and under such circumstances that, if he by that omission had caused death, he would have been guilty of murder, and has carried that omission to such a length as, at the time of carrying it to that length, he contemplated as sufficient to cause death, and has thereby committed an offence punishable under the 308th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 319.

8. That he has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 319th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 377.

9. That he has committed robbery, and has thereby committed an offence punishable under the 377th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 379.

10. That he has committed dakoity, and has thereby committed an offence punishable under the 379th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 388.

11. That he, being a public servant in the post office department, and being, as such, intrusted with the keeping of a packet, has committed criminal breach of trust by misappropriating a thing contained in such packet, and has thereby committed an offence punishable under the 388th article of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 435.

12. That he has committed lurking house tresspass by night, and has thereby committed an offence punishable under the 435th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 436 applied to Clauses 364 and 435.

13. That he has committed lurking house trespass by night, being an offence punishable under the 435th clause of the Penal Code, in order to the committing of theft, and has actually committed such theft, being an offence

punishable under the 364th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has by reason of the premises become liable to cumulative punishment under the 436th clause of the Penal Code.

And the same form shall be followed, as nearly as may be, in charges with one head only, upon other clauses of the Penal Code.

Charges containing Two or more Heads.

CLXVIII.

When it appears to the Magistrate that the facts which can be established in evidence show a case falling within two or more clauses of the Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such clauses.

Charge in cases falling within two or more clauses of the Penal Code.

CLXIX.

When it appears to the Magistrate that the facts which can be established in evidence show the commission of two or more offences punishable under the same clause of the Penal Code, the charge shall contain two or more heads charging such offences respectively.

Two or more offences punishable under the same clause.

CLXX.

When it appears to the Magistrate that the facts which can be established in evidence show a case within some one of two or more clauses of the Penal Code, but it is doubtful which of such clauses will be applicable, or show the commission of one of two or more offences punishable under the same clause of the Penal Code, but it is doubtful which of such offences will be proved to have been committed, the charge shall contain two or more heads, framed respectively on each of such clauses, or charging respectively each of such offences accordingly.

Cases of doubt as to the clause whic is applicable, or the offence which may be proved.

CLXXI.

When a charge contains more heads than one, the form shall be as follows, or to the same effect:

Form of charge of more than one head.

Forms of Charge.

I, A. [*name and office of Magistrate, &c.*] declare, that there is hereby made against Z. the charge:

First: That he has, knowing a coin to be counterfeit, delivered the same to another person as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 242, 243.

Secondly: That he has, knowing a coin to be counterfeit, attempted to induce another person to receive it as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and intending that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and knowing it to be likely that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate, &c.*]

First: That he has committed murder, and has thereby committed an offence punishable under the 300th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 300, 301

Secondly: That he has committed manslaughter, and has thereby committed an offence punishable under the 301st clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 364, 367.

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Secondly: That he has committed theft, having made preparation for causing death to a person in order to the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has committed theft, having made preparation for causing restraint to a person in order to retiring after the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 364, 387.

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Secondly: That he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And the same shall be followed, as nearly as may be, in charges with more heads than one, upon other clauses of the Penal Code.

CLXXII.

Amendment of charge.

It shall be competent to the Court, at any stage of a trial, to amend or alter the charge against a Defendant.

CLXXIII.

When the trial may be immediately proceeded with after amendment.

If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the Defendant in his defence, it shall be at the discretion of the Court, after making the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

CLXXIV.

When a new trial may be ordered, or trial suspended.

If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the Defendant in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the Defendant to make his defence to the amended or altered charge; and after hearing his defence, may further adjourn the trial to admit of the appearance of any witnesses whose evidence the Court may consider to be material to the case, or whom the Defendant may wish to be summoned in his defence. If after the reading of the amended or altered charge to the Defendant no postponement is desired by the Defendant, or considered necessary by the Court, the Court may at once proceed with the trial.

CLXXV.

Defendant may recal and cross-examine witnesses for prosecution.

In all cases of amendment or alteration of a charge, the Defendant shall be allowed to recal and cross-examine any witness that may have been examined for the prosecution.

CHAPTER XIII.

Of Offences triable by the Magistrate.

Cases in which a Warrant or Complaint may issue against the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CLXXVI.

Cases in which Magistrate may issue a warrant.

In all cases where a complaint shall be made before a Magistrate having jurisdiction in the case that any person has committed, or is suspected to have

committed, any offence triable by such Magistrate, and which is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such Magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the Magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint.

Summons instead of warrant.

CLXXVII.

If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the Magistrate to believe the charge well founded, and the offence be of the nature described in Article CLXXVI., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

Postponement of issue of process.

CLXXVIII.

It shall be at the discretion of the Magistrate, in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct that if such person be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release such person from custody. In the event of bail being given, the officer shall forward the recognizance to the Magistrate.

Magistrate may direct bail to be taken.

CLXXIX

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Magistrate may dispense with personal attendance of accused.

CLXXX.

Where any such person as is mentioned in Article XXXVII. or Article XXXVIII. shall be apprehended out of the jurisdiction of the Magistrate granting the warrant against him, and carried before the Magistrate who endorsed such warrant, the Magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the Magistrate granting the warrant, shall take bail of such person for his appearance before the Magistrate granting the warrant, release the person from custody, and forward the recognizance to the Magistrate granting the warrant.

Arrest on warrant endorsed by a Magistrate of another district.

CLXXXI.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a Magistrate he cannot be found, the Magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear and deliver himself up within the period fixed, it shall be lawful for the Magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual

Proclamation for an absconding party.

Attachment of property.

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seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Property after six months to be at the disposal of Government

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Summoning, &c. of Witnesses.

CLXXXII.

Summons to a witness to attend and give evidence

The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said Magistrate, to testify what they know concerning the complaint made against the accused party.

CLXXXIII.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the Magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the Magistrate of another district, in order to its being executed out of the jurisdiction of the Magistrate who shall have issued the same.

CLXXXIV.

In what cases warrant in the first instance.

If the Magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CLXXXV.

Refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant under his hand and seal, commit such witness to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV.

Examination of Parties and Evidence.

CLXXXVI.

Examination of the complainant and witness for the prosecution.

When any such case, as referred to in Article CLXXVI., is brought before a Magistrate, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the Magistrate from examining the Defendant at any stage of the proceedings, as provided in Article CXCII.

CLXXXVII.

To be in the presence of the Defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the Defendant, and the Defendant shall be permitted to cross-examine them.

CLXXXVIII.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed

shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the Magistrate upon the objection. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CLXXXIX.

Magistrate not to receive written confession of guilt made to the police.

It shall not be competent to the Magistrate to receive in evidence against the Defendant any written admission or confession of guilt, or any statement made by him to the darogha or other officer of police, and by him reduced into writing.

CXC.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding article shall prevent the Magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CXCI.

May summon necessary witnesses at any stage of the proceedings.

It shall be at the discretion of the Magistrate, at any stage of the proceedings, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CXCII.

Examination of Defendant.

It shall be at the discretion of the Magistrate to examine the Defendant at any stage of the proceedings, from the time of the Defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the proceedings are completed and judgment pronounced.

CXCIII.

Magistrate how to proceed in case of confession.

If the Defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the Magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

CXCIV.

No influence to be used to induce disclosures.

No influence, by means of any promise or threat, shall be used to any Defendant under examination, to induce him to disclose or withhold any matter within his knowledge.

CXCV.

Examination of the Defendant how to be recorded.

The examination of the Defendant, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the Defendant refuses to sign, his reason shall be stated in writing, as he gives it, at the foot of the examination; and whether the Defendant signs it or not the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the Defendant's statement.

CXCVI.

Defendant may be detained for any offence committed by him.

The Defendant, on examination, may be committed or held to bail by the Magistrate for any offence which from the evidence he may appear to have committed.

CXCVII.

Any person attending may be detained for any offence committed by him.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Bail and Warrant of Commitment.

CXCVIII.

Application of previous rules.

The provisions of Articles CXLII. to CLIV. inclusive shall be applicable to cases triable by the Magistrate under the rules this section.

Adjournment.

CXCIX.

Application of previous rules.

The provisions of Article CLV. shall be applicable to cases triable by the Magistrate under the rules of this section.

Discharge of the Defendant.

CC.

When Defendant to be discharged.

When a Magistrate finds that there are not sufficient grounds for putting the Defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Charge, Plea, and Defence.

CCI.

Charge.

When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the Defendant as the Magistrate may consider necessary, have been taken, the Magistrate shall consider whether any and what offence is *primâ facie* proved against the Defendant, and if he finds that an offence is apparently proved against the Defendant which falls within the definition in a certain clause of the Penal Code, or within one or other of the definitions in several clauses of the code, he shall prepare in writing a charge against the Defendant in the manner prescribed in Chapter XII. of this Code of Procedure.

CCII.

Plea.

The charge shall then be read to the Defendant, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCIII.

Plea of "guilty."

If the Defendant plead "guilty," the Magistrate shall explain to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the Defendant comprehends the nature of the charge, and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCIV.

Plea of "not guilty."

If the Defendant plead "not guilty" to the charge, he shall be called upon to enter upon his defence, and to produce his evidence, if in attendance, and shall be allowed to recal and cross-examine the witnesses for the prosecution.

CCV.

The Magistrate shall summon any witness, and examine any evidence, that may be offered in behalf of the Defendant, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial to such future time as may be necessary, and so from time to time. Evidence for the defence.

CCVI.

The provisions of Articles CLXXXIII., CLXXXIV., CLXXXV., and CLXXXVIII. shall be applicable to witnesses named in support of the defence. Witnesses for the defence.

CCVII.

If the Defendant is convicted, the Magistrate shall pass sentence upon him according to law. Conviction.

CCVIII.

In any trial before a Magistrate, wherein it may appear, at any stage of the proceedings, that either from the value of the property exceeding the pecuniary limit assigned to the Magistrate, or other cause, the case is one which the Magistrate is not competent to try, the Magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with the rules of Chapter XI. for conducting preliminary investigations in cases triable by the High Court or Session Court; and if the accused have been called upon to plead to a charge or charges prepared by the Magistrate, such charge or charges, and the proceedings consequent thereon, shall be held to be null and void. How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

CHAPTER XIV.

Of Offences triable by the Magistrates.

Cases in which a Summons on Complaint shall issue to the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CCIX.

In all cases where a complaint shall be made before a Magistrate, having jurisdiction in the case, that any person has committed or is suspected to have committed any offence other than the offences provided for in Chapter XIII. of this Code of Procedure, for which he is liable, upon a summary conviction for the same before a Magistrate, to be imprisoned or fined, or otherwise punished, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such Magistrate, to answer to the said complaint; provided that if the Magistrate shall be satisfied by evidence before him that the accused is about to abscond, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance for the arrest of the accused. Summons shall issue. When warrant may issue.

CCX.

Every such summons shall be served upon the person to whom it is so directed, by delivering the same to such person, or by leaving the same with some adult member of his family; and the proper officer shall certify the service of the said summons. Service of summons.

CCXI.

Provided that, before issuing the summons to the accused party, it shall be competent to the Magistrate to examine the complainant as to the specific facts of the case, and if upon such examination it shall appear to the Magistrate that there is no sufficient ground for summoning the accused, he may refuse the summons. When Magistrate may refuse summons.

CCXII.

If the person served with a summons as provided in Article CCX. shall not be and appear before the Magistrate at the time and place mentioned in If summons be not obeyed, warrant.

such summons, and it shall be made to appear to the Magistrate that such summons was so served in what shall be deemed by the Magistrate to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such Magistrate, if he shall think fit, upon declaration being made before him substantiating the matter of such complaint to his satisfaction, to issue his warrant to apprehend the person so summoned, and to bring him before such Magistrate to answer to the said complaint.

CCXIII.

Magistrate may dispense with personal attendance of accused.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Summoning, &c. of Witnesses.

CCXIV.

Summons to witness to attend and give evidence.

If it shall be made to appear to the Magistrate that any person is likely to give material evidence in behalf of the complainant or Defendant in any case which may be tried according to the rules of this Chapter, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, such Magistrate shall issue his summons to such person under his hand and seal, requiring him to appear at a time and place mentioned in the summons, before the said Magistrate, to testify what he knows concerning the matter of the said complaint.

CCXV.

Diet money for witnesses.

It shall be lawful for the Magistrate to direct that before any process is issued for the attendance of witnesses in cases under this Chapter, the person preferring the charge shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witnesses who may be summoned on his application, during their attendance at the Magistrate's Court, and the Magistrate shall regulate the amount of diet money so required, with reference to the probable period such witnesses may have to be in attendance, and in the event of the prolonged detention of witnesses, shall direct the deposit of any further sum which to the said Magistrate may seem requisite.

CCXVI.

Magistrate may summon necessary evidence.

It shall be at the discretion of the Magistrate, at any stage of the trial, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CCXVII.

Application of previous rules.

The provisions of Articles CLXXXIII., CLXXXIV., and CLXXXV. shall be applicable to witnesses summoned according to the provisions of Articles CCXIV. and CCXVI.

Bail.

CCXVIII.

Defendant may be admitted to bail or to be at large upon personal recognizance.

If upon the day and at the place appointed the Defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the Magistrate by virtue of any warrant, it shall be at the discretion of the Magistrate to admit the Defendant to bail, or allow him to be at large upon his personal recognizance. If he cannot give bail, when required to do so, he shall be committed to custody. In cases in which the order of the Magistrate shall direct that the Defendant be admitted to bail, the provisions of Articles CXLII. to CLI. inclusive shall be applicable to cases tried according to the provisions of this Chapter.

Appearance, Examination of Parties, and Evidence.

CCXIX.

Nonappearance of Complainant.

If upon the day appointed for the appearance of the Defendant, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he shall think fit.

CCXX.

Admission by Defendant of truth of complaint.

On the appearance of both parties for the hearing of the case, the substance of the complaint shall be stated to the defendant, and he shall be asked if he have any cause to show why he should not be convicted; and if he thereupon admit the truth of such complaint, and show no cause, or no sufficient cause, why he should not be convicted, then the Magistrate may convict him accordingly.

CCXXI.

Proceeding when no such admission is made.

If the Defendant do not admit the truth of the complaint, then the Magistrate shall proceed to hear the complainant, and such witnesses as he may examine in support of his complaint, and also to hear the Defendant and such witnesses as he may examine in his defence; and having heard the parties and their witnesses, shall consider the whole matter and determine the same, and shall convict the Defendant or dismiss the complaint, as the case may be.

CCXXII.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the Magistrate upon the objection. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXXIII.

Adjournment.

Before or during the hearing of any complaint, it shall be lawful for the Magistrate to adjourn the hearing of the same to a future day, to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall be so adjourned the Defendant shall not appear, the Magistrate may issue his warrant for the arrest of such Defendant, and if the complainant shall not appear, the Magistrate may dismiss such complaint.

CCXXIV.

Formal charge may be prepared.

It shall be at the discretion of the Magistrate, in the trial of any case in which a summons on complaint shall issue to the Defendant, to follow the rules of procedure prescribed in Chapter XII. for the preferring of criminal charges, and in Articles CCI. to CCVI. inclusive, for the trial of such charges.

CCXXV.

Conviction.

If the Defendant is convicted, the Magistrate shall pass sentence upon him according to law.

Costs.

CCXXVI.

Magistrate may award costs.

In all cases of summary conviction under this chapter, it shall be lawful for the Magistrate making the same, in his discretion, to award that the Defendant shall pay to the complainant such costs as to such Magistrate shall seem just and reasonable; and in cases where such Magistrate, instead of convicting as aforesaid, shall dismiss the complaint, it shall be lawful for him, in his discretion, in and by his order of dismissal, to award and order that the complainant shall pay to the Defendant such costs as to such Magistrate shall seem just and reasonable; and the sums so allowed for costs shall always be specified in such conviction or order of dismissal aforesaid, and shall be recoverable by distress and sale of the goods and chattels of the party, and, in default of such distress, by imprisonment, without labour, in the gaol for the confinement of debtors, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

CHAPTER XV.

Of Inquiries and Trials before the Subordinate Criminal Courts.

CCXXVII.

How cases are to be brought before Subordinate Criminal Courts.

Criminal cases shall be brought before the Subordinate Criminal Courts by reference by the Magistrate. It shall, however, be at the discretion of the Government, respect being had to the public convenience, to authorize a Subordinate Criminal Court also to receive such cases on complaint preferred directly to such Court, or on the report of a police officer.

CCXXVIII.

Cases how to be referred.

Whenever a criminal case is referred by a Magistrate to a Subordinate Criminal Court, the order of reference, if the case have been transmitted by a police officer, shall be recorded on such officer's report, and if the complaint have been preferred direct to the Magistrate, the process for causing the attendance of the accused shall be made returnable to the Court to which the case is referred, and the witnesses shall be directed by the summons to attend at such Court.

CCXXIX.

Subordinate Criminal Courts to follow the same rules of procedure as the Magistrate.

In the trial of criminal cases, whether brought before them on reference by the Magistrate, or directly by complaint preferred to themselves, or by the report of a police officer, the Subordinate Criminal Courts shall be guided by the rules prescribed for the guidance of the Magistrate in similar cases, and police officers and others shall be bound to obey all orders and processes issued in such cases by a Subordinate Criminal Court in like manner as if they had been issued by the Magistrate.

CCXXX.

Mode of proceeding in cases beyond jurisdiction.

In every case before a Subordinate Criminal Court, wherein the Court at any stage of the proceedings may be of opinion that the evidence is such as to warrant a presumption that the Defendant has been guilty of an offence calling for a more severe punishment than the Court is authorized to adjudge, it shall stop further proceedings, and if the case have been brought before it by complaint directly preferred, shall leave the complainant to apply to the Magistrate, and in all other cases shall submit its proceedings to the Magistrate, who shall either try the case himself, or, if the case have been submitted by a Subordinate Criminal Court of the second class, refer it, at his discretion, to a Subordinate Criminal Court of the first class. In either case, the Court which gives judgment in the trial shall examine the parties and the evidence, as if no proceedings had been held in any other Court.

CCXXXI.

Foregoing rule not to interfere with the power of a S.C.C. to commit for trial before the Session Court.

Provided, that nothing in the last preceding article shall be held to interfere with the exercise of power specially conferred upon a Judge of a Subordinate Criminal Court, in regard to committing or holding to bail persons charged with criminal offences to take their trial before the Session Courts.

CHAPTER XVI.

Place where Preliminary Investigations and Trials held, an open Court.

CCXXXII.

Place where investigation made an open Court.

The room or place in which the Magistrate, or Judge of a Subordinate Criminal Court, shall sit to hear and try any complaint triable by himself, or to conduct the preliminary investigation into any case triable by the High Court or a Session Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for the Magistrate or Judge of a Subordinate Criminal Court, in his discretion, to order that during the investigation into any particular case triable by the High Court or a Session Court, no person shall have access to, or be, or remain in such room or building without the consent or permission of such Magistrate or Judge, if it appears to him that the ends of justice will be best answered by so doing.

CHAPTER XVII.

Of Recognizance and Security to keep the Peace.

CCXXXIII.

Personal recognizance to keep the peace in cases of conviction.

Whenever a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Criminal Court by which the offence may be cognizable, and the Court by which a final sentence or order in the case may be passed shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace from the person so convicted, it shall be lawful to the Court passing the final sentence or order to direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to such person's condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year from the time of the prisoner's discharge, if the sentence or order be passed by a Magistrate or other officer exercising the powers of a Magistrate, or three years if the sentence or final order be passed by the High Court or by a Session Court.

CCXXXIV.

Security to keep the peace.

In cases wherein it may appear necessary to require security for keeping the peace in addition to the personal recognizance of the party, it shall also be lawful to the Court passing the final sentence or order to direct the same, and to fix the amount of the security bond to be executed by the surety or sureties, with a provision that if the same be not given the party required to find the security shall be kept in custody for any time not exceeding one year, if the order be passed by a Magistrate, or other officer exercising the powers of a Magistrate, or three years if the order be passed by the High Court or by a Session Court.

CCXXXV.

Personal recognizance without conviction.

It shall be lawful for the magistrates, or other officers exercising the powers of a Magistrate, to take a recognizance from a party in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizance may not have been convicted of any specific offence.

CCXXXVI.

Security without conviction.

In cases wherein it may appear necessary to require security for keeping the peace, in adition to the recognizance of the party, it shall be lawful for such Magistrate, or other officer exercising the powers of a Magistrate, to direct the same, although the party required to give such security may not have been convicted of any specific offence, and to fix a reasonable amount for the security bond to be executed by the surety or sureties.

CCXXXVII.

For one year.

Whenever it shall appear to the Magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, need not exceed one year, it shall be lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security, to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXXXVIII.

For more than one year.

Whenever it shall appear to the Magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the Magistrate or other officer aforesaid shall record his opinion to that effect, with an order specifying the amount of recognizance and security, as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however shall in no case exceed three years. If the party shall not furnish the recognizances and security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Court of Session (according as the order may have been passed by the Magistrate exercising jurisdiction within the town of Agra, or by a Magistrate of a district in the Mofussil), which, after examining them and calling for any further information or evidence which it may think necessary, shall pass orders on the case confirming, modifying, or annulling the orders of the Magistrate or other officer as aforesaid, and if the orders so passed by the High Court or Session Court confirm to any extent the requisition for recognizance or securities, the High Court or Session Court shall direct the Magistrate or other officer as aforesaid to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXXXIX.

Imprisonment not to exceed period of recognizance and security.

Provided always, that no party shall be kept in prison under the provisions of the foregoing articles for a longer period than that for which the recognizance and securities have been required from him.

CCXL.

When Magistrate may release persons under requisition of security.

The Magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security to keep the peace, whether by their own orders or by those of any other person exercising the powers of a Magistrate; provided the Magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCXLI.

When he must report.

In cases in which a Magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security to keep the peace, by order of the High Court or of a Session Court, can be safely released without such security, the Magistrate shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCXLII.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the peaceable behaviour of parties, may, at all times, obtain a discharge from their future responsibility, by delivering up, or causing to be delivered up, the parties for whom they may have become responsible, to the proper Magistrate. In such case it shall be competent to such parties to find new sureties.

CCXLIII.

Proceeding to compel payment of penalty of personal recognizance.

Whenever it may be proved before the Magistrate that any such recognizance of a party as aforesaid has been forfeited, he shall proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the Civil Court.

CCXLIV.

Proceeding to compel payment of penalty by sureties.

Whenever it may be proved before the Magistrate that any such recognizance has been forfeited, if a security bond shall have been taken and the magistrate shall think that proceedings should be had upon such bond, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the Magistrate shall proceed to levy the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XVIII.

Security for Good Behaviour.

CCXLV.

When Magistrate may require security for good behaviour for one year.

Whenever it shall appear to a Magistrate, from the evidence to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, it shall be competent to the Magistrate to require security for the good behaviour of such person for a definite period not exceeding one year.

CCXLVI.

How to proceed in cases beyond one year.

Whenever it shall appear to a Magistrate, from the evidence to general character adduced before him, that any person is by habit a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the Magistrate shall record his opinion to this effect, with an order specifying the amount of security which should, in his judgment be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

CCXLVII.

Case to be laid before the High Court or Session Court.

If the person required to furnish security, as provided in the last preceding article, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Sessions Court, (according as the order may have been passed by the Magistrate exercising jurisdiction within the town of Agra, or by a Magistrate of a district in the Mofussil,) which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate, as it may judge proper and equitable.

CCXLVIII.

High Court or Session Court may require security not exceeding three years.

In all such cases, if the High Court or Session Court shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

CCXLIX.

What the order for security is to contain.

In every instance in which security for good behaviour may be required, whether by the High Court, the Session Court, or the Magistrate, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated.

CCL.

In default of security, party to be committed to prison.

In the event of any person required to give security under the provisions of the foregoing articles failing to furnish the security so required, he shall be committed to prison until he furnish the same; provided always, that no party shall be kept in prison for a longer period than that for which the security has been required from him.

CCLI.

When Magistrate may release persons under requisition of security.

The Magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders or by those of any other person discharging the functions of a Magistrate; provided the Magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCLII.

When he must report.

In cases in which a Magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security for good behaviour, by order of the High Court or of a Session Circuit, can be safely released without such security, the Magistrate shall make an immediate report of the case, with his sentiments, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCLIII.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the good behaviour of parties may at all times obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper Magistrate. In such case it shall be competent to such parties to find new sureties.

CCLIV.

Proceeding to compel payment of penalty by sureties.

Whenever the Magistrate shall be of opinion, that by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, proceedings should be had upon the bond executed by the surety or sureties, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the Magistrate shall proceed to levy the penalty from such surety or sureties, by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XIX.

Juries and Assessors.

CCLV.

Trials in Agra to be by jury.

The trial of all offences within the limits of the town of Agra, except offences punishable upon summary conviction, shall be by jury.

CCLVI.

Governor General in Council may extend trial by jury to other places.

The provisions of the preceding article may be extended by the Governor General in Council to such places beyond the limits of the town of Agra as he may see fit.

CCLVII.

Trial by jury, before the Session Court, of registered persons.

Criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor General in Council may see fit to extend this rule, registered according to such rules as the Governor General in Council shall prescribe, is the Defendant or one of the Defendants, shall be by jury, of

which at least one half shall consist, if such Defendant desire it, of persons so registered. How the jury is to be constituted.

CCLVIII.

Criminal trials before the Session Judge, in which registered and non-registered persons are joined as Defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial. Joinder of registered and non-registered persons.

CCLIX.

In such cases, if the non-registered Defendant desire it, at least one half of the jury shall consist of non-registered persons, and if the registered Defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered, and the remaining half non-registered persons. How the jury is to be constituted in such cases.

CCLX.

In all trials, whether before the High Court at Agra or before the Session Judge, the jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two thirds with the concurrence of the Judge, shall be necessary for a verdict of guilty; and in default of such unanimity, or of such majority with the concurrence of the Judge, the Defendant shall be acquitted. Number of which the jury is to consist. Number of voices necessary to a verdict of guilty.

CCLXI.

For all classes of the community not included in the number of those to whom the mode of trial by jury has by the above provisions been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed; and if any of the assessors or the Judge shall desire it, the opinion of the assessors shall be recorded in writing. But the decision is vested exclusively in the Judge. Trials before the Session Court with assessors.

CCLXII.

All persons resident within the limits of the general jurisdiction of the High Court shall, according to such rules, and subject to such qualifications as shall be fixed in manner herein-after mentioned, be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly. Who are capable of serving as jurors and assessors.

CCLXIII.

The High Court shall have power from time to time to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors and assessors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall before they are issued have received the sanction of the Governor General of India in Council. High Court to make rules in regard to jurors and assessors.

CHAPTER XX.

TRIALS BEFORE THE COURT OF ORIGINAL CRIMINAL JURISDICTION CONSTITUTED BY A JUDGE OR JUDGES OF THE HIGH COURT.

CCLXIV.

When it happens that a Judge of the High Court has sent a case for trial before the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, or that a person is appointed to officiate as a Judge of the High Court, who had previously officiated in the Court by which commitments are made to that Court, and there are before the High Court charges preferred by himself upon which trials are still to be held, it shall nevertheless be competent to him to proceed thereupon as in other cases. A person holding the office of Judge of the High Court may try cases committed by himself.

CCLXV.

It shall be competent to the High Court to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice. Postponement of trial.

CCLXVI.

Commencement of trial.

When the Court is ready to commence the trial, the Defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXVII.

Plea of guilty.

If the Defendant plead "guilty," the Court shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy itself that the Defendant comprehends the nature of the charge and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCLXVIII.

Refusal to plead, or plea of "not guilty."
Mode of taking evidence.

If the Defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course, and in the manner in which it has heretofore been taken in trials in the Supreme Court at Calcutta, except in so far as is otherwise provided by this Code of Procedure.

CCLXIX.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV.

CCLXX.

Examination of Defendant, evidence at the trial.

The examination of the Defendant before the Magistrate shall be given in evidence at the trial.

CCLXXI.

High Court not to receive written confession of guilt made to the police.

It shall not be competent to the High Court to receive in evidence against the Defendant any written admission or confession of guilt, or other statement made by him to the darogha or other officer of police, and by him reduced into writing.

CCLXXII.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the foregoing article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CCLXXIII.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCLXXIV.

Defence.

When the case for the prosecution has been brought to a close, the Defendant shall be called upon to enter upon his defence and to produce his evidence.

CCLXXV.

Witnesses for the defence.

The Defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the Magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXIV.

CCLXXVI.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCLXXVII.

In the event of the adjournment of a trial, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial. Jury to attend at adjourned sitting.

CCLXXVIII.

The Judge shall sum up the evidence on both sides, and the jury shall afterwards deliver their finding upon the charge. Summing up and delivery of verdict.

CCLXXIX.

If the Defendant is convicted, the Court shall pass sentence upon him according to law. Conviction.

CHAPTER XXI.

Cases reserved, and Cases certified by the Advocate General.

CCLXXX.

When any person shall have been convicted of any offence before a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, the Court before which the case shall have been tried may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the High Court, and thereupon shall have authority to respite execution of the sentence on such conviction, or postpone the sentence until such question shall have been considered and decided, as it may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive sentence, or to render himself in execution, as the case may be. Judges of the High Court, in the exercise of original jurisdiction, may reserve case for the opinion of the High Court.

CCLXXXI.

When the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court has reserved a point of law for the opinion of the High Court, the Judge or Judges before whom the trial was held shall, in a case signed by such Judge or Judges, state the point or points of law which shall have been so reserved, and such case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges reserving the point or points shall if possible be one, and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to pass such judgment and sentence as to the said Judges shall seem right, or to alter the sentence, if any, passed by the Court of original jurisdiction. Statement. Hearing.

CCLXXXII.

It shall be lawful for any party upon whom sentence of punishment has been passed by a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, to present a memorial to the Advocate General of the Bengal Presidency, alleging that there is error in the decision of such Court on a point of law, and distinctly specifying such error. If the Advocate General is of opinion that there is error as set forth in the memorial, or that a point or points of law decided by the Court of original criminal jurisdiction should be further considered, he shall certify the same under his signature on the back of the memorial, and transmit the memorial with such certificate to the Judge or Judges before whom the trial was held; otherwise he shall reject the memorial. Error in law may be certified by the Advocate General.

CCLXXXIII.

Upon the receipt of such memorial, together with the certificate of the Advocate General, the Judge or Judges before whom the trial was held shall transmit the memorial and certificate, with a statement of facts and such remarks as he or they may deem necessary, to the High Court. The case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges before whom the trial was held shall, if possible, be one; and Statement of case. Hearing.

the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said Judges shall seem right.

CHAPTER XXII.

Trials before the Session Courts.

CCLXXXIV.

Cognizance of offences by the Session Court in original jurisdiction.

Except in the cases referred to in Article CXIV., a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by the Advocate General, or by a Magistrate or other officer specially empowered by the Government to act in this behalf.

CCLXXXV.

A person holding the office of Session Judge may try cases committed by himself.

When it happens that a Zillah Judge has sent a case for trial before the Court of Session, or that a person is appointed to officiate as Judge of a Court of Session, who had previously officiated in the Court by which commitments are made to that Court of Session, and there are before the Court of Session charges preferred by himself upon which trials are still to be held, he shall nevertheless proceed thereupon as in other cases.

CCLXXXVI.

Postponement of trial.

It shall be competent to a Court of Session to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

CCLXXXVII.

Commencement of trial.

When the Court is ready to commence the trial, the Defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXXXVIII.

Plea of "guilty."

If the Defendant plead "guilty," the Judge shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the Defendant comprehends the nature of the charge and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCLXXXIX.

Refusal to plead, or plea of "not guilty."

If the Defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course.

CCXC.

How evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness and signed by him in the presence of the Judge. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be at the discretion of the Judge to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Judge shall allow the same to be put, the question and answer shall be taken down, and the objection and the name of the person making it shall be noticed in taking down the depositions, together with the decision of the Judge upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXCI.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV.

Witness refusing to answer may be committed to custody.

CCXCII.

The examination of the Defendant before the Magistrate shall be given in evidence at the trial.

Examination of Defendant, evidence at the trial.

CCXCIII.

It shall not be competent to the Session Court to receive in evidence against the Defendant any written admission or confession of guilt, or other statement made by him to the darogha or other officer of police, and by him reduced into writing.

Session Court not to receive written confession of guilt made to the police.

CCXCIV.

Nothing contained in the foregoing article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

But may receive evidence of a police officer as to unrecorded admission of guilt.

CCXCV.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

Court may summon necessary evidence.

CCXCVI.

When the case for the prosecution has been brought to a close, the Defendant shall be called upon to enter upon his defence, and to produce his evidence.

Defence.

CCXCVII.

The Defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the Magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXIV.

Witnesses for the defence.

CCXCVIII.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

Adjournment.

CCXCIX.

In the event of the adjournment of a trial, the jury or assessors, as the case may be, shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

Jury or assessors to attend at adjourned sitting.

CCC.

In cases tried with the aid of assessors, the Judge, before pronouncing his own opinion, shall call upon the assessors for their opinions. The opinion of each assessor shall be given separately and recorded. In cases tried by jury, the Judge shall sum up the evidence on both sides, and the jury shall then deliver their finding upon the charge.

Delivery of opinions of assessors. Of verdict of jury.

CCCI.

If the Defendant is convicted, and the case is one which the Session Judge is competent to dispose of finally, he shall proceed to pass sentence upon the Defendant according to law.

Conviction.

CCCII.

If the case is one in which, if the Defendant be convicted, it belongs to the High Court to pass sentence, the Session Judge shall record the conviction,

Reference to High Court.

and refer the case to the High Court, with a statement in writing of his opinion as to the sentence which should be passed upon the Defendant; and in cases tried by jury, the Session Judge shall also transmit with the case a report of his direction to the jury.

CCCIII.

Transmission of monthly calendar of trials by Session Judge.

The Session Judges shall transmit to the High Court monthly statements or calendars in such form as the High Court shall prescribe, of all trials held by them, exhibiting the sentence passed upon each Defendant, together with an abstract of the evidence given at the trial.

CHAPTER XXIII.

HIGH COURT,

As a Court of Reference.

CCCIV.

Court for hearing of referred trials.

A case referred by a Session Judge for the final judgment and sentence of the High Court shall be heard by a Court constituted by three Judges of the said High Court, and the sentence shall be signed by not less than two of such Judges.

CCCV.

Hearing of case referred, tried with assessors.

In cases referred for the final judgment and sentence of the High Court, which have been tried with the aid of assessors, that Court shall revise the record of trial submitted by the Court of Session, and if it approves of the conviction of the Defendant, it shall proceed to sentence him to punishment according to law.

CCCVI.

Acquittal.

If the High Court disapproves of the conviction of the Defendant absolutely, it shall pass a judgment of acquittal.

CCCVII.

Difference of opinion between High Court and Session Court as to offence proved.

If the High Court disapproves of the conviction of the Defendant, on the ground that the offence proved does not answer to the legal definition of the offence of which he is convicted, it shall annul the conviction; but it shall be competent to the Court to pass a judgment convicting the Defendant of the offence which it deems to be proved by the evidence, and to sentence him to punishment according to law.

CCCVIII.

Competence of Court to direct further inquiry, &c.

In any case referred as above to the High Court, it shall be open to the prosecutor or the Defendant to move the Court for further inquiry upon any point bearing upon the guilt or innocence of the Defendant; and it shall be competent to the Court, upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case.

CCCIX.

Hearing of case referred, tried by jury.

In cases referred for the sentence of the High Court which have been tried by jury, the Court, on reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, shall determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right.

CHAPTER XXIV.

Finding, Judgment, and Sentence.

CCCX.

Form of verdict in jury trials.

In any trial by jury, when the jury are unanimous in thinking the Defendant guilty, the verdict shall be that the Defendant is guilty of the offence specified in the charge, or of the offence specified in such a head of charge, when there

are more heads than one. When the jury are not unanimous, but two thirds or more concur in thinking the Defendant guilty, the verdict shall be that the defendant is found guilty of the offence specified in the charge, or in such a head of charge as above provided, by a majority consisting of six, seven, eight, as the case may be, of the jurors. When any number of the jurors exceeding one third concur in thinking the Defendant not guilty, the verdict shall be that the Defendant is not guilty. When the jury, or two thirds or more of the jurors, concur in thinking the Defendant guilty of an offence, but are doubtful under which of two heads of charge the offence falls, the verdict shall be that the Defendant is guilty either of the offence charged in such a head, or of the offence charged in such another head of charge.

CCCXI.

When the trial in any Criminal Court is concluded, the Court, in passing judgment, if it convicts the Defendant, shall distinctly specify the offence of which, and the clause of the Penal Code under which, it convicts him; or if it be doubtful under which of two clauses the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Clause 61. What the judgment is to specify.

The latter part of the two preceding articles has been framed in accordance with the provisions of the following clause of the Penal Code: "In all cases in which judgment is "given in the manner prescribed in the law of procedure that a person is guilty of an offence, "but that it is doubtful under which of certain penal provisions of this code he is punishable, "the offender shall be liable to be punished with whatever punishment is common to the "penal provisions between which the doubt lies, and if imprisonment is common to the penal "provisions between which the doubt lies, and any one of those provisions admits of simple "imprisonment, the offender may be sentenced to simple imprisonment."

CCCXII.

If the Defendant, after having been called upon for his defence, is acquitted, the acquittal shall be recorded so as to have a distinct reference to the charge to which the Defendant was required to answer, in order to save him from any further prosecution upon the facts to which it related. Acquittal.

CCCXIII.

The finding and sentence shall be recorded in the following form, or to the same effect:— Form of finding and sentence.

In trials by Jury:

When the Jury are unanimous:

The Jury find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* [*sentence*].

2d. The Jury find that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

When the Jury are not unanimous, but two thirds or more of the Jurors concur in thinking the Defendant guilty:—

3d. A majority of the Jurors, consisting of seven of their number, find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code. The Court concurs in such finding, and, as *Z* has, by reason of the premises, become liable to cumulative punishment under the 112th Clause of the Penal Code, the Court directs that the said *Z* be [*sentence*].

4th. A minority of the Jury, consisting of two of their number, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member,

assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code, and has by reason of the premises become liable to cumulative punishment under the 112th Clause of the Penal Code. The Court concurs in such finding, and directs that the said *Z* be discharged.

5th. When the Jury are not unanimous, but any number of the Jurors exceeding one third concur in thinking the Defendant not guilty, the form No. 2 shall be followed.

When the Jury, or two thirds or more of the Jurors, concur in thinking the Defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :—

6th. The Jury [*or* the majority of the Jurors consisting of of their number, *as the case may be*,] find that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code. The Court directs [*or*, the Court concurs in such finding, and directs,] that under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials with Assessors :

7th. The Court, concurring with the Assessors, (or one or more of the Assessors,) finds that *Z* is guilty of the offence specified in the charge; viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

8th. The Court, differing from the Assessors, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

9th. The Court, concurring with one of the Assessors, finds that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code; and the Court directs that, under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials upon a formal charge, without Jury or Assessors :

10th. The Court finds that *Z* is guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

11th. The Court finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

In trials in which no formal charge has been prepared :

12th. The Court finds that *Z* has committed assault, and has thereby committed an offence punishable under the 342d Clause of the Penal Code, and directs that the said *Z* be [*sentence*].

13th. The Court finds that the complaint of assault is not proved, acquits *Z*, and directs that he be discharged.

CCCXIV.

Where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment to which such person is sentenced for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Conviction of offences punishable cumulatively.

CCCXV.

Where a person shall be convicted of several offences at the same time, punishable under the same or different clauses of the Penal Code, it shall be lawful for the Court to sentence him to the several penalties prescribed by the code in respect of the several offences of which he shall have been so convicted, provided that the punishment to which such person is sentenced for each offence is within the ordinary penal jurisdiction of the Court, such penalties, when consisting of imprisonment, to commence the one after the expiration of the other; and it shall not be necessary for the Court, only by reason of the aggregate punishment for the several offences being in excess of the punishment which the Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Conviction of several offences.

CCCXVI.

Where sentence shall be passed on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment on the subsequent conviction, to commence at the expiration of the imprisonment to which such offender shall have been previously sentenced; and if empowered to pass sentence of transportation or banishment, the Court may award such sentence on the subsequent conviction to commence immediately, or at the expiration of the imprisonment to which such person shall have been previously sentenced.

Judgment on offender already imprisoned under sentence for another crime.

CCCXVII.

A party who has once been tried upon a formal charge, prepared as directed in the rules of this Code of Procedure for preparing criminal charges, shall not be liable to a renewed prosecution.

Party tried upon formal charge not liable to renewed prosecution.

CCXVIII.

In cases referred by the Session Judge for the final sentence of the High Court, the proper officer of the Court shall, within three days after passing of the sentence, or sooner if practicable, transmit a copy of it, under the seal of the High Court, and attested with his official signature, to the Session Judge, who shall immediately issue a warrant to the Magistrate to cause the sentence to be carried into execution. The Magistrate, upon the receipt of the warrant, shall cause the sentence to be executed, and return the warrant to the Session Judge, with an endorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed.

Execution of sentence of the High Court in cases referred by the Session Judge.

CCCXIX.

In cases tried by the Court of original jurisdiction at Agra, constituted by one or more Judges of the High Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the magistrate of Agra.

High Court, in original jurisdiction, to direct warrant of execution to Magistrate of Agra.

CCCXX.

In cases tried by the Session Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the Magistrate of the district in which the trial was held.

Session Court to direct warrant to district Magistrate

CCCXXI.

Upon the receipt of a warrant under either of the two last preceding articles, the Magistrate shall cause the sentence to be executed, and shall return the

Execution of sentence under two foregoing articles.

warrant when the sentence has been fully executed to the Court from whence it issued, with an endorsement under his official seal and signature, certifying the manner in which the sentence has been executed.

CCCXXII.

Warrant of commitment in cases of imprisonment.

In every case of imprisonment under the sentence of the High Court, whether as a Court of reference or of original jurisdiction, of the Session Court, and of the Magistrate, the Magistrate shall issue his warrant to the gaoler, stating the offence of which the Defendant has been convicted, and the period during which he is to be imprisoned. In like manner, in every case of imprisonment under the sentence of a Subordinate Criminal Court, the Court passing the sentence shall issue its warrant to the same effect.

CHAPTER XXV.

High Court as a Court of Revision.

CCCXXIII.

Revision in cases of illegal sentence.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Session Court the sentence which may lawfully be passed for such offence; and thereupon the Session Court shall pass a new sentence according to law, and shall amend the record in accordance therewith.

CCCXXIV.

When the sentence is too severe.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the sentence passed upon any person convicted by the Session Court is too severe, may mitigate the sentence to such extent as to the said High Court shall seem proper, and shall certify such mitigated sentence to the Session Court, which shall thereupon amend the record in accordance therewith, and proceed to give effect to the sentence of the High Court.

CCCXXV.

When in trials with assessors the judgment is not warranted by the evidence.

The High Court, in any case tried by the Session Court, except cases tried by Jury, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the judgment pronounced on any prisoner was not warranted by the evidence, may, if it thinks fit, require the Judge of the Court in which the conviction was had, to certify under his hand all or any part of the evidence taken in the case affecting such prisoner, with any observations which the Judge may be desirous of making in explanation of the judgment; and thereupon the High Court may annul such judgment, if such judgment shall appear to it not warranted by the evidence, and shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXVI.

Revision in jury trials.

The High Court, in any case tried by jury in the Session Court, in which, upon a review of the abstract statement or calendars of prisoners punished without reference, it shall appear to it that there has been error in the decision of the Session Court on a point or points of law, or that a point or points of law should be considered by the High Court, may call for the record, together with a report of the Session Judge's direction to the jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right. The High Court shall certify its proceedings to the Court in which the con-

viction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and if necessary, amend the record in accordance therewith.

CCCXXVII.

In cases of sentence by Session Judge, which ought to have been referred.

The High Court, in any case tried in the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the case is one which ought to have been referred for the judgment and sentence of the High Court, may, if it think fit, annul the sentence passed by the Session Court, and require the Session Judge to refer the case, and thereupon the High Court shall pass such judgment and sentence as to the said High Court shall seem right.

CCCXXVIII.

General power of revision by the High Court.

The High Court may, whenever it thinks fit, call for the whole record of my criminal trial in any Criminal Court within its jurisdiction, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or punish any person acquitted in the Court which tried the case; provided that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from determining any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CHAPTER XXVI.

APPEALS.

CCCXXIX.

No appeal in cases of acquittal,

There shall be no appeal from a judgment of acquittal passed by any Criminal Court.

CCCXXX.

Appeal in cases of conviction.

An appeal shall lie in all cases of conviction by the Magistrates in the mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, and by the Magistrate of Agra in cases arising within the town of Agra, to the High Court.

CCCXXXI.

Proceeding in appeals.

Any person convicted by a judgment of any of the Criminal Courts of original jurisdiction mentioned in the last preceding article, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the record of conviction, and confirm, or amend, or reverse the finding and sentence of the lower Court, but not so as to enhance the punishment awarded; provided, that if the party appealing be in gaol, he shall be at liberty to present his petition of appeal to the Magistrate in charge of the same, who shall thereupon forward it to the proper appellate authority; provided also, that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CCCXXXII.

Court of Appeal may direct further inquiry, &c.

In any case appealed as above, except a case tried by jury, it shall be open to the appellant to move the Appellate Court for further inquiry; and it shall be competent to the Court upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case. The Appellate Court shall at the same time direct whether the lower Court shall pass a fresh sentence in the case, or certify the result of the further inquiry and the additional evidence to the Appellate Court.

CCCXXXIII.

Court of Appeal, how to proceed in a case of conviction by an incompetent Court.

When a Magistrate or Judge of a Subordinate Criminal Court has convicted a person of an offence not triable by such Magistrate or Judge, it shall be competent to the Court of Appellate Jurisdiction to annul the conviction and sentence of the lower Court, and to direct the trial of the case by a Court of competent jurisdiction.

CCCXXXIV.

Appeals from orders in proceedings other than trials.

An appeal shall lie from all orders in proceedings other than criminal trials, passed by the Magistrates in the mofussil and by the Judges of the Subordinate Criminal Courts, to the Session Court; and by the Magistrate of Agra, in cases arising within the town of Agra, to the High Court; and it shall be competent to the Courts of Appellate Jurisdiction to pass upon such appeals such orders as they shall deem just and proper.

CCCXXXV.

Period for presenting petition of appeal.

The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court within thirty days, calculated in the same manner.

CCCXXXVI.

Result when Appellate Court is equally divided.

Where the Appellate Court consists of more than one Judge, if there should be a difference of opinion among the Judges, and the Court be equally divided, the judgment of the Lower Court shall be affirmed.

CCCXXXVII.

Finality of orders in appeal.

Except as provided in Article CCCXXVIII., the sentences passed by the Appellate Court upon criminal appeals shall be final.

CCCXXXVIII.

Powers of Session Judge and Magistrate to regulate the proceedings of subordinate Courts.

It shall be at all times lawful for a Sessions Judge and for a Magistrate, or other officer exercising the powers of a Magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the High Court to alter any sentence of any subordinate Court, except upon appeal by parties concerned duly made according to the foregoing provisions.

CCCXXXIX.

Power of Session Court to direct bail.

The Session Court shall have a discretionary power of directing that any Defendant shall be admitted to bail before a Magistrate or Subordinate Criminal Court, or that the bail required by a Magistrate or Subordinate Criminal Court be reduced; and also of directing that a party not in custody be admitted to bail on his surrendering to a warrant.

CCCXL.

Power of High Court to direct bail.

The High Court shall have the like discretionary power in regard to any Defendant, or any party, charged with an offence before any Criminal Court.

SCHEDULE A.

Explanatory Notes.—1st.—The entries in the 2d and 5th Columns of the Schedule, headed "Offence" and "Penalty," are not intended as definitions of the offences and penalties described in the several corresponding clauses of the Penal Code, or even as abstracts of those clauses, but merely as references to the subject of the clause of the Code, the Number of which is given in the 1st Column.

2d.—The Term "Bailable or not," in Column 3., is to be taken in connexion with the provisions of Articles CXLII. and CXLIII. of the Code of Criminal Procedure.

3d.—No offence is triable by a Court inferior to the Court specifically mentioned in Column 4. as competent to try such offence; but offences are triable by Courts superior to the Court so mentioned.

4th.—The entries in the last Column show when any offence entered in Column 2. admits of cumulative punishment, and the number of the clause expressly providing for such punishment. The circumstances under which cumulative punishment may be inflicted will be ascertained on reference to the clauses themselves.

CHAPTER IV.—OF ABETMENT.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
88	Previous abetment of any offence by instigation, if the offence is committed in consequence.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	The punishment of the offence - -	Cumulative, Clause 89.
90	Previous abetment of any offence punishable with imprisonment, by instigation, with actual delivery of a bribe.	Idem -	Idem - - -	Imprisonment to $\frac{1}{4}$ of the longest term for that offence, or fine as for that offence, or both.	
91	Previous abetment of any offence punishable with imprisonment, by instigation, with threat of injury.	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 92.
93	Previous abetment by a person present instigating another to persist in the commission of an offence punishable with rigorous imprisonment for one year and upwards.	Idem -	Idem - - -	Imprisonment of either description, i. e. rigorous or simple, to $\frac{1}{4}$ of the longest term for that offence, or fine, or both.	
94	Previous abetment by instigating the public, or more than 10 persons, to the commission of any offence.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
95	Previous abetment of an offence by conspiracy, if the offence is committed in consequence.	Idem -	Idem - - - -	See Clause 88.	
96	Previous abetment by conspiracy of any offence punishable with imprisonment, if any act or illegal omission takes place in consequence in order to the offence.	Idem -	Idem - - - -	See Clause 90.	

CHAPTER IV.—Of Abetment—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty	6. When admitting of cumulative Punishment.
97	Previous abetment by any act or illegal omission intended to aid the commission of an offence, if the offence is committed.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	See Clause 88.	
98	When in an attempt to commit an offence, or in the commission, or in consequence of the commission of an offence, a different offence is committed which was likely to be committed.	Bailable if both offences are bailable.	By the Court by which the graver offence is triable.	The previous abettor of the first offence liable to the punishment of the last-mentioned offence.	Cumulative, Same clause.
99	When in consequence of previous abetment an offence is committed, which would be a different offence, but for some misconception of the doer from which the abettor is free, or but for some intention, &c. of the doer unknown to the abettor.	According as the offence contemplated by the abettor is bailable or not.	By the superior Court by which either the offence committed or abetted is triable.	The abettor liable to the same punishment as if no such misconception, &c. existed.	
100	When anything is done in consequence of previous abetment which would be a certain offence, but for the youth, &c. of the doer, or for some misconception on his part from which the abettor is free.	According as the offence to which the contemplated act, if committed without such exceptional circumstances, would have amounted, is bailable or not.	By the Court by which the contemplated act when an offence is triable.	See Clause 88.	
101	A public servant concealing by any act or illegal omission a design to commit any offence which it is his duty to prevent, if that offence is committed.	See 96 -	See 96 - - -	Imprisonment of either description to ½ of the longest term of imprisonment for that offence, or fine, or both.	
102	Concealing by any act or illegal omission a design to commit any offence punishable with rigorous imprisonment for one year or upwards, if the offence is committed.	Idem -	Idem - - -	See Clause 93.	
105	Subsequent abetment by intentionally omitting to give information of an offence committed, as required by law.	Bailable -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	

106	Subsequent abetment of any offence punishable with rigorous imprisonment for one year or upwards, by causing marks of the commission of that offence to disappear.	Idem -	By the Court by which the offence abetted is triable.	Imprisonment of either description to $\frac{1}{1\cdot2}$ of the longest term for that offence, or fine, or both.	
107	Subsequent abetment of an offence punishable with imprisonment for 7 years or upwards by harbouring the offender to screen him from punishment. *Exception.*—Not to extend to harbour given by relations specified.	Idem -	Magistrate - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
108	Subsequent abetment by assisting the offender to retain or dispose of property fraudulently acquired.	Idem -	See 106 - - -	Imprisonment of either description to 1 year, or fine, or both.	
	CHAPTER V.—OFFENCES AGAINST THE STATE.				
109	Waging or attempting to wage war, or previously abetting the waging of war against the Government by instigation, conspiracy, or aid.	Not bailable -	High Court or Session Court	Death, or Transportation for life, or imprisonment of either description for life, and forfeiture of all property.	
110	Previous abetment of the last offence by concealing a design to commit it.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
111	Assaulting, &c. the Governor General of India, or the Governor, or Deputy Governor, or a Member of Council of any Presidency, to compel or restrain the exercise of his lawful powers, or attempting such offence.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	Cumulative, Clause 112.
113	Attempting to excite disaffection to the Government.	Bailable -	Idem - - -	Banishment for life, or for any term, from the Company's Territories, to which fine may be added, or simple imprisonment to 3 years, to which fine may be added, or fine simply.	
114	Waging war, &c. against any Asiatic power in alliance with the Government.	Not bailable -	Idem - - -	Banishment, or imprisonment of either description to 3 years, to which fine may be added, or fine simply.	
115	Making preparation within the Company's Territories to commit, or to take refuge after committing depredations on the territories of any power at peace with the Government.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine and forfeiture of specific property.	

CHAPTER VI.—OFFENCES RELATING TO THE ARMY AND NAVY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
116	Previously abetting the commission of Mutiny by a Soldier or Sailor of the King or of the East India Company.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
117	Previous abetment of Mutiny by such a Soldier or Sailor, when Mutiny is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment of either description for life, or a term not less than 3 years; also liable to fine.	
118	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
119	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer, if the assault is committed.	Idem - -	Idem - - - -	See Clause 116.	
120	Previous abetment of the desertion of such a Soldier or Sailor.	Bailable -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
121	Previous abetment of the desertion of such a Soldier or Sailor, if desertion is committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
122	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy.	Not bailable -	Idem - - -	See Clause 116.	
123	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy, if such desertion is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment which may extend to life; also liable to fine.	
124	Subsequent abetment by harbouring such a Soldier or Sailor who has deserted. *Exception.*—Not extended to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
125	Previous abetment of a breach of Military or Naval discipline by such a Soldier or Sailor committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
126	Any person wearing any garb or carrying any token used by a Soldier in the service of the King or of the East India Company, with the intention that it may be believed that he is such a Soldier.	Idem - -	Idem - - -	See Clause 124.	

CHAPTER VII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

129	Rioting—joining or continuing in a riotous assembly.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	Cumulative, Clause 134.
130	Rioting by joining or continuing in a riotous assembly, knowing that such assembly has been commanded to disperse.	Idem - -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	Cumulative, Clause 131.
132	Rioting, being armed with any weapon - -	Idem - -	Idem - - - - -	Idem.	
133	If murder be committed in a riot by one of the rioters, every other rioter shall be punished under this Clause.	Idem - -	High Court or Session Court	Imprisonment of either description to 5 years, or fine, or both.	
135	Intentionally joining or continuing in *any* assembly of 12 or more persons, knowing that it has been commanded to disperse.	Idem -	Magistrate - -	Simple imprisonment to 1 month, or fine, or both.	
136	Malignantly and wantonly giving provocation, intending to cause rioting, if rioting be committed.	Idem - -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 137.

CHAPTER VIII.—OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS.

138	Being or expecting to be a public servant, and accepting for himself or for another any gratification as a motive for doing or forbearing to do any official act, favoring or disfavoring any party, &c.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
139	Accepting any gratification as a motive for inducing by personal influence any public servant to do or forbear to do any official act, &c. &c.	Idem - -	High Court or Session Court	Simple imprisonment to 6 months, or fine, or both.	
140	A public servant abetting, previously or subsequently, the offence in the last Clause with reference to himself.	Idem - -	Idem - - -	Simple imprisonment to 3 years, or fine, or both.	If any person, in doing anything whereby he commits an offence under any clause in this Chapter, also commits an offence under any clause con-
141	A Judge accepting a gift from a plaintiff or defendant in any proceeding in his Court.	Idem - -	Idem - - -	Simple imprisonment to 2 years, or fine, or both.	
142	A Judge pronouncing a decision which he knows to be unjust.	Idem - -	Idem - - -	Idem.	
143	A Judge for any purpose of favour or disfavor to any party disobeying the Law of Procedure.	Idem - -	Idem - - - -	Simple imprisonment to 1 year, or fine, or both.	

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
144	Any Officer authorized to commit to confinement, or keep in confinement, knowingly committing or keeping any person unjustly.	Bailable -	High Court or Session Court	See Clause 141.	tained in any other Chapter of the Penal Code, the punishment shall be cumulative. Clause 151.
145	A public servant disobeying the law for his guidance, intending to cause injury to any person or to save any person from legal punishment.	Idem - -	See 138 - - -	See Clause 143.	
146	A public servant charged with the preparation of any document, framing it incorrectly, intending to cause injury to any person, &c.	Idem - -	Idem - - -	See Clause 138.	
147	A public servant bound not to engage in trade engaging in trade.	Idem - -	Idem - - -	Simple imprisonment to 3 months, or fine, or both.	
148	A public servant bound not to purchase or bid for certain property purchasing or bidding for the same.	Idem - -	Idem - -	See Clause 147.	
149	A public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.	Idem - -	Idem - - -	Fine to 3 months' Salary; or to thrice the amount of legal fees received by him in one month, or, if paid in land, to $\frac{1}{4}$th of the annual value of such land.	
150	Wearing the garb, &c. of a public servant in order to pass off as such.	Idem - -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
	CHAPTER IX.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.				
152	Absconding to avoid being served with a summons or notice.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
153	Preventing the service or the affixing of any summons, or notices, or the removal of it when it has been affixed; or preventing a proclamation.	Idem - -	Idem - - -	Idem - - - - - -	Cumulative, Clause 154.
155	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Idem - -	Idem - - -	Idem.	

156	Intentionally omitting to produce or deliver up any document, being legally bound to produce or deliver up the same.	Idem - -	Idem - - -	Idem.
157	Intentionally omitting to give any notice, or furnish information on any subject as required by law.	Idem - -	Idem - - -	Idem.
158	Knowingly furnishing false information to a public servant.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.
159	Refusing to take an oath, &c. to state the truth -	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.
160	Being on oath to state the truth, refusing to answer questions.	Idem - -	Idem - - -	Idem.
161	Refusing to sign a statement made to a public servant when legally required to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.
162	Knowingly stating to a public servant on oath as true that which is false.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.
163	Giving false information to a public servant in order to cause him to use his lawful power to the loss or annoyance of any person.	Idem - -	Idem - - -	See Clause 158.
164	Preventing or attempting to prevent any public servant empowered to enter or remain in any place, or make any search, or examine anything, or put any mark upon anything, from exercising such power, or causing annoyance to him in the exercise of it.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine of Rupees 500, or both. — Cumulative, Clause 165.
166	Resisting the taking of any property by the lawful authority of a public servant.	Idem - -	Idem - - -	See Clause 159 - - - — Cumulative, Clause 167.
168	Obstructing a sale held under lawful authority -	Idem - -	Idem - - -	See Clause 152 - - - — Cumulative, Clause 169.
170	Bidding for property at a lawfully authorized sale on account of a person under a legal incapacity to purchase it, or bidding without intending to perform the obligations incurred thereby.	Idem - -	Idem - - -	Imprisonment of either description to 1 month, or fine, or both.
171	Any person resisting the lawful taking into custody of himself or of any other.	Idem - -	Idem - - -	See Clause 159 - - - — Cumulative, Clause 172.
173	Rescuing or attempting to rescue any person from lawful custody.	Idem - -	Idem - -	See Clause 59 - - - — Cumulative, Clause 174.
175	Escaping from lawful custody, or attempting to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine, or both. — Cumulative, Clause 176.

CHAPTER IX.—Contempts of the lawful Authority of Public Servants—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
177	Harbouring a person to prevent his being taken into lawful custody. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rs. 200, or both.	
178	Harbouring a person escaped from custody - *Exception.*—As in Cl. 177.	Idem -	Idem - - -	Imprisonment of either description to 2 months, or fine to Rs. 500, or both.	
179	Insulting or interrupting a public servant in the discharge of his duty.	Idem -	Idem - - -	See Clause 164 - - - -	Cumulative, Clause 180.
181	Intentionally omitting to give assistance to a public servant as directed by law.	Idem -	Idem - - -	See Clause 177.	
182	Disobeying the local order of a public servant, if such disobedience cause danger to human life, health, or safety, or any obstruction or annoyance to persons lawfully employed, or rioting, or risk of rioting.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 183.
184	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 185.
186	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 187.

CHAPTER X.—OFFENCES AGAINST PUBLIC JUSTICE.

190	Giving or fabricating false evidence - -	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
191	Giving or fabricating false evidence to cause any person to be convicted of a capital offence.	Not bailable -	Idem - - -	To transportation for life or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	
192	Giving or fabricating false evidence to cause any person to be convicted of an offence punishable with imprisonment for more than 7 years.	Idem -	Idem - - - -	The punishment of that offence.	

193	Removing, concealing, &c. any property to prevent its being taken as a forfeiture, or in satisfaction of a fine under a sentence, or in execution of a decree.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
194	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Idem -	Idem - - -	Idem.	
195	In a declaration which a Court of Justice is bound to receive as evidence, knowingly stating as true that which is false touching a material point.	Idem -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
196	Fraudulently or for annoyance instituting a civil suit without just grounds.	Idem -	Idem - - -	See Clause 193.	
197	Insulting or interrupting a Court of Justice -	Idem -	Magistrate - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 198.
199	Threatening any person to induce him to refrain from instituting or defending any civil suit, or from taking any legal steps in such a suit, or from giving evidence in any judicial proceeding.	Idem -	Idem - - -	See Clause 195 - - -	Cumulative, Clause 200.
201	Escaping or attempting to escape from custody under a lawful sentence.	Not bailable -	Idem - - -	See Clause 195 - - - -	Cumulative, Clause 202.
203	Returning from transportation not for life -	Idem -	High Court or Session Court	Transportation for life, also liable to fine.	
204	Returning from transportation for a term of years, and banishment for life, under a commuted sentence.	Idem -	Idem - - -	Idem.	
205	Returning from banishment for a term - -	Idem	Idem - - -	Transportation which may extend to 7 years and banishment for life.	
206	Harbouring any person escaped from custody under sentence, or returned from transportation or banishment. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - -	Simple imprisonment to 6 months, or fine to Rupees 1,000, or both.	
207	Having accepted a conditional remission of punishment, and violating the condition.	Not bailable -	High Court or Session Court	Punishment of original sentence, or if part undergone, the residue.	

CHAPTER XI.—OFFENCES RELATING TO THE REVENUE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
209	Smuggling	Bailable	Magistrate	Imprisonment of either description to 3 months, or fine to Rupees 500, added to 5 times the value of the property smuggled, or both.	
210	Receiving smuggled goods knowing them to be smuggled.	Idem	Idem	Idem.	
211	Placing a vessel in a forbidden situation	Idem	Idem	Fine to Rupees 1,000.	
212	Cultivating, collecting, or manufacturing any prohibited article.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 500, or both.	
213	Making or having in possession any implement, material, or receptacle, in order to committing any offence under the last Clause.	Idem	Idem	Idem.	
214	Selling any prohibited article	Idem	Idem	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
215	Having in possession any prohibited article	Idem	Idem	Fine to twice the value of the article.	
216	Omitting to put a mark on any article as required by law.	Idem	Idem	Fine to the value of the article.	
217	Performing any part of the process of counterfeiting a stamp from which the Government derives a revenue.	Idem	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
218	Having in possession any implement, &c. for counterfeiting such stamp.	Idem	Idem	Idem.	The punishments provided by this Chapter are independent of any confiscation to which the property, with respect to which the offences defined in this Chapter have been committed, is liable under any law. Clause 229.
219	Making any implement for counterfeiting such stamp.	Idem	Idem	Idem.	
220	Selling any stamp known to be counterfeit	Idem	Idem	Idem.	
221	Having in possession a stamp, knowing it to be a counterfeit of a Government stamp, intending it for sale.	Idem	Idem	Idem.	
222	Using a counterfeit stamp as genuine	Idm	Magistrate	Imprisonment of either description to 6 months, or fine, or both.	
223	Effacing from a stamp a writing in order that such stamp may be used for a different writing.	Idem	Idem	Imprisonment of either description to 3 months, or fine to an amount equal to Rupees 500, added to 5 times the price of such stamp, or both.	

224	Using for any writing a stamp known to have been before used for a different writing.	Idem	-	Idem	-	-	-	Idem.	
225	Establishing or maintaining an illegal post, or conveying or delivering letters, &c. by such post.	Idem	-	Idem	-	-	-	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
226	Being in charge of any letter or packet on board of a vessel, and intentionally omitting to deliver the same as required by law.	Idem	-	Idem	-	-	-	Fine.	
227	Being in charge of a Ship and refusing to receive on board any letters, &c. as legally required by a public servant.	Idem	-	Idem	-	-	-	Fine to Rupees 500.	
228	A person having a licence to cultivate, collect, manufacture, import, export, convey, sell, or have in possession any article, acting contrary to the conditions of the licence.	Idem	-	Idem	-	-	-	Fine to Rupees 200.	

CHAPTER XII.—OFFENCES RELATING TO COIN.

232	Counterfeiting Coin - - - -	Not bailable	-	High Court or Session Court				Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
233	Counterfeiting the King's or Company's Coin -	Idem	-	Idem	-	-	-	Imprisonment of either description, maximum 7 years, minimum 2 years, also liable to fine.	
234	Making a die for counterfeiting Coin - -	Idem	-	Idem	-	-	-	See Clause 232.	
235	Making a die for counterfeiting the King's or Company's Coin.	Idem	-	Idem	-	-	-	See Clause 233.	
236	Having in possession any implement or material for committing an offence under any of the four last preceding Clauses.	Idem	-	Idem	-	-	-	See Clause 232.	
237	Previously abetting the counterfeiting of the King's or Company's Coin without the Company's Territories.	Idem	-	Idem	-	-	-	See Clause 233.	
238	Importing into or exporting from the Company's Territories counterfeit Coin to be passed as genuine.	Idem	-	Idem	-	-	-	See Clause 232.	
239	The same with respect to the King's or Company's Coin.	Idem	-	Idem	-	-	-	See Clause 233.	

CHAPTER XII.—Offences relating to Coin—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
240	Having any counterfeit Coin, known to be such when it came into possession, and delivering, &c. the same to any person with the intention that it shall pass as genuine.	Not bailable -	High Court or Session Court	See Clause 232.	
241	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
242	Delivering, &c. to any person any Coin as genuine, knowing it to be counterfeit.	Idem -	Magistrate - - -	Fines to 10 times the value of the genuine Coin.	
243	Possessing counterfeit Coin, knowing it to be such when it came into possession, intending that it may pass as genuine.	Idem -	High Court or Session Court	See Clause 232.	
244	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
245	A person employed in a Mint intentionally causing by any act or omission any Coins issued therefrom to be of a weight or composition different from that fixed by law.	Idem -	High Court - -	Idem.	
246	Diminishing the weight or altering the composition of any Coin intending that it shall pass as unaltered.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 1 year, minimum 3 months, also liable to fine.	
247	The same as to the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, also liable to fine.	
248	Possessing any implement or material intending to employ the same for committing an offence under any of the three last preceding Clauses.	Idem -	Idem - - -	See Clause 246.	
249	Possessing Coin altered as in Clause 246, having known it to be so altered when it came into possession, and delivering, &c. the same to any person with intention that it may pass as unaltered.	Idem -	Idem - - -	Idem.	
250	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

251	Possessing Coin, known when it came into possession to have been dealt with as in Clause 246, intending to cause the same to be in circulation.	Idem -	Idem - - -	See Clause 246.
252	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

253	Fraudulently using a false balance - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.
254	Fraudulently using a false weight or measure -	Idem -	Idem - - -	Idem.
255	Having a false balance, weight or measure for fraudulent use.	Idem -	Idem - - - -	Idem.
256	Making a false balance, weight or measure for fraudulent use.	Idem -	Idem - - -	Idem.

CHAPTER XIV.—OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, AND CONVENIENCE.

257	Malignantly or wantonly doing any act known to be likely to spread the infection of a dangerous disease.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.
258	Knowingly disobeying any rule of the Quarantine laws.	Idem -	Idem - - -	Idem.
259	Adulterating food or drink intended for sale so as to make the same noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.
260	Selling any food or drink as wholesome knowing the same to be noxious.	Idem -	Idem - - - -	Idem.
261	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.
262	Offering for sale or issuing from a Dispensary any drug or medical preparation known to have been adulterated.	Idem -	Idem - - - -	Idem.
263	Knowingly selling or issuing from a Dispensary any drug or medical preparation as a different drug or medical preparation.	Idem -	Idem - - -	Idem.

CHAPTER XIV.—Offences affecting Public Health, Safety, and Convenience—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
264	Causing the atmosphere in any public way to be noxious or offensive.	Bailable	Magistrate	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
265	Driving or riding on a public way so rashly or negligently as to indicate a want of due regard for human life.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 2,000, or both.	
266	Navigating any vessel so rashly or negligently, &c.	Idem	Idem	Idem.	
267	Conveying for hire any person in a vessel in such a state, or so loaded, as to endanger his life.	Idem	Idem	Idem.	
268	Dealing with any poisonous substance so rashly or negligently as to indicate a want of due regard for human life.	Idem	Idem	Idem.	
269	Dealing with fire or any combustible matter so rashly or negligently, &c.	Idem	Idem	Idem.	
270	So dealing with any explosive substance	Idem	Idem	Idem.	
271	So dealing with any machinery	Idem	Idem	Idem.	
272	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Idem	Idem	Idem.	
273	A person omitting to take order with any animal in his possession so as to guard against danger to human life or of grievous hurt from such animal.	Idem	Idem	Idem.	
274	Causing danger, obstruction, or annoyance in any public way or line of navigation.	Idem	Idem	Fine to Rupees 200.	

CHAPTER XV.—OFFENCES RELATING TO RELIGION AND CASTE.

275	Destroying, damaging, or defiling a place of worship or sacred object with intention to insult the religion of any class of persons.	Bailable	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
276	Causing a disturbance to an assembly engaged in religious worship, and assaulting or threatening any person engaged in such worship.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 277.

278	Disturbing a religious assembly in a place of worship.	Idem -	Idem - - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 279.
280	Trespassing in a place of sepulture, offering indignity to a human corpse, or disturbing a funeral with intention to wound the feelings or to insult the religion of any person.	Idem -	Idem - - - -	See Clause 278 - - -	Cumulative, Clause 281.
282	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Idem -	Idem - - -	Idem.	
283	Doing or threatening to do any act with intention to cause it to be believed that some person is thereby rendered an object of divine displeasure, &c. &c.	Idem -	Magistrate - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
284	Committing an assault with intention to cause a person to lose caste, or inducing him to do something ignorantly whereby he will incur loss of caste.	Idem -	Idem - - -	Imprisonment of either description to 6 months, fine to Rupees 2,000, or both.	
285	Intentionally causing the food of a person to be in a state in which he, according to his religion or caste, cannot use it.	Idem -	Idem - - - -	Fine to Rupees 50.	
286	If the last offence is repeated after a conviction -	Idem -	Idem - - - -	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	

CHAP. XVI.—ILLEGAL ENTRANCE INTO AND RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY.

287	A subject of the King, not a native of the Company's Territories, omitting on his arrival by Sea in those Territories to report his name, place of destination, and object of pursuit.	Bailable -	Magistrate - - -	Fine to Rupees 1,000.	
288	A subject of the King, not a native of the Company's Territories, entering the said Territories by land without legal authority.	Idem -	Idem - - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
289	A subject of the King, &c. entering or residing in a certain part of the said Territories without the licence required by law.	Idem -	Idem - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
290	Repeating the last offence after conviction -	Idem -	High Court or Session Court	Banishment for life or for any term, or simple imprisonment to 1 year, to which fine may be added.	

CHAPTER XVII.—OFFENCES RELATING TO THE PRESS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
291	Possessing a Printing Press not having made and subscribed the declaration required by law.	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine to Rupees 5,000, or both.	
292	Printing or publishing any book, &c., without the name of the Printer and Publisher and the place of printing and publishing.	Idem -	Idem - - -	Idem.	
293	Printing, &c. any Newspaper, &c. contrary to law	Idem -	Idem - - -	Idem.	

CHAPTER XVIII.—OFFENCES AFFECTING THE HUMAN BODY.

300	Murder - - - - -	Not bailable -	High Court or Session Court	Death, or Transportation for life, or rigorous imprisonment for life, also liable to fine.	
301	Manslaughter - - - - -	Idem -	Idem - - -	Imprisonment of either description to 14 years, or fine, or both.	
302	Voluntary culpable homicide by consent -	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
303	Voluntary culpable homicide in defence -	Idem -	Idem - - -	See Clause 301.	
304	Causing death by an act or illegal omission so rash or negligent as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 2 years, a fine, or both.	Additional, Clause 305.
306	Previous abetment by aid of Suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Idem -	Idem - - -	See Clause 300.	
307	Previously abetting by aid the commission of Suicide.	Idem -	Idem - - -	See Clause 302.	
308	Doing any act, &c. with such intention, &c. that if death ensued it would be murder, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	

309	Doing any act, &c. with such intention, &c. that if death ensued it would be voluntary culpable homicide, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
311	Being a Thug - - - -	Idem -	Idem - - -	Transportation for life, or imprisonment of either description for life, also liable to fine.	
	Causing Miscarriage.				
312	A woman causing herself to miscarry, or any person causing a woman to miscarry.	Bailable -	High Court or Session Court	See Clause 309.	
313	Committing the offence in the last Clause without the woman's consent.	Not bailable -	Idem - - -	The punishment of miscarriage in excess of any punishment incurred by reason of any hurt caused to the woman.	
	Of Hurt.				
318	Causing hurt, except as in Clause 325 -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
319	Causing grievous hurt, except as in Clause 326 -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 10 years, minimum 6 months, also fine.	
320	Causing hurt in an attempt to commit murder -	Idem -	Idem - - -	See Clause 308.	
321	Causing hurt for the purpose of extortion, &c. -	Idem -	Idem - - -	Rigorous imprisonment maximum 14 years, minimum 1 year, also liable to fine.	
322	Causing grievous hurt for the purpose of extortion, &c.	Idem -	Idem - - -	See Clause 308.	
323	Causing hurt (except as in Clause 325) by a sharp instrument, or by fire, &c., or by any corrosive or explosive substance, or by any substance deleterious to inhale or swallow, or by means of any animal.	Idem -	Magistrate - - -	See Clause 309.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued:* Of Hurt—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable	5. Penalty.	6. When admitting of cumulative Punishment.
324	Causing grievous hurt (except as in Clause 326) by any of the means described in the last Clause.	Not bailable -	High Court or Session Court -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
325	Causing hurt on grave and sudden provocation, not intending to hurt any other but the person who gave the provocation	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
326	Causing grievous hurt as in last Clause -	Idem -	High Court or Session Court	Imprisonment of either description to 1 year, or fine to Rupees 2,000, or both.	
327	Causing grievous hurt by an act or illegal omission so rash or negligent as to indicate a want of regard for the safety of others.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 328.
329	Any act or illegal omission intended, &c. to cause grievous hurt, the causing of which would be an offence other than that defined in Clause 326, and carrying it to a length at the time contemplated as sufficient to cause grievous hurt.	Not bailable -	Idem - -	Imprisonment of either description to half the term the offender would have been liable to, had he caused the grievous hurt intended, or fine, or both.	
	Wrongful Restraint and Confinement.				
332	Wrongfully restraining any person - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
333	Wrongfully confining any person - -	Idem -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
334	Wrongfully confining for 3 days or more -	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
335	Wrongfully confining for 10 days or more -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, in addition to 3 days for every day of such wrongful confinement, minimum 6 months in addition to 1 day for every day of such wrongful confinement, also liable to fine.	

336	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any term of imprisonment to which the offender may be liable under Clause 335, also liable to fine.
337	Wrongful confinement for the purpose of extortion, &c.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any imprisonment under either of the last two Clauses, also liable to fine.
338	While keeping a person in wrongful confinement, omitting to furnish him with anything necessary to prevent danger of death or hurt.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.
		Assault.		
342	Assault otherwise than on grave and sudden provocation.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.
343	Assault in attempt to commit murder - -	Not bailable -	High Court or Session Court	See Clause 308.
344	Assault in attempt to commit kidnapping -	Idem -	Idem - - -	Imprisonment of either description, maximum half the term of imprisonment for kidnapping, minimum 6 months, also liable to fine.
345	Assault in attempt to cause grievous hurt otherwise than on grave and sudden provocation.	Idem	Idem - - -	Imprisonment of either description to $\frac{1}{3}$d the term for grievous hurt, or fine, or both.
346	Assault on a woman in attempt to commit rape -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.
347	Assault on a woman with intent to outrage her modesty.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.
348	Assault on a person with intent to dishonour him otherwise than on grave or sudden provocation.	Idem -	Idem - - -	Imprisonment of either description to 2 years, or fine, or both.
349	Assault on a person in attempt to commit theft on any property he may be wearing or carrying.	Not bailable -	Idem - - -	Idem.
350	Assault on a person in attempt to wrongfully confine him.	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Assault—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
351	Assault on a person on grave and sudden provocation given by that person.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
352	Making show of assault except on grave and sudden provocation.	Idem -	Idem - - -	Idem.	
			Kidnapping.		
355	Kidnapping - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
356	Kidnapping intending or knowing that murder may be committed in consequence.	Idem -	Idem - - -	See Clause 308.	
357	Kidnapping intending or knowing that the consequence may be grievous hurt or rape, &c.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
358	Being in charge of a vessel and permitting a person to embark on board for a place not within the Company's Territories without a legal order or permit.	Bailable -	Magistrate - -	Simple imprisonment to 1 month for every person so embarked, or fine to Rupees 200 for every person, or both.	
			Rape.		
360	Rape - - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
			Unnatural Offences.		
361	Unnatural offences - - - -	Not bailable -	High Court or Session Court	See Clause 360.	
362	Unnatural offences without consent - -	Idem -	Idem - - -	Imprisonment of either description, maximum for life, minimum 7 years, also liable to fine.	

364	Theft - - - -	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	Rigorous imprisonment to 3 years, or fine, or both.	
365	Theft within any building, tent, or vessel used as a human dwelling, or any building used for the custody of property, in pursuance of a conspiracy in which any person residing or employed within and any person not so residing or employed are engaged.	Idem -	Idem - - -	Rigorous imprisonment, maximum 3 years, minimum 6 months, also liable to fine.	
366	Theft on a letter or packet in possession of an Officer of the Post Office.	Idem -	Idem - - -	Idem.	
367	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Idem -	High Court or Session Court	Rigorous imprisonment, maximum 7 years, minimum 1 year, also liable to fine.	
	Extortion.				
369	Extortion - - - -	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
370	Putting or attempting to put in fear in order to extortion.	Idem -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
371	Extortion by putting a person in fear, for himself or for another, of death or grievous hurt.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
372	Putting or attempting to put a person in fear, for himself or for another, of death or grievous hurt, in order to extortion.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
373	Extortion by putting a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust.	Idem -	Idem - - -	See Clause 371.	
374	Putting or attempting to put a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust in order to extortion.	Idem -	Idem - - -	See Clause 372.	
	Robbery and Dacoity.				
377	Robbery - - - - -	Not bailable -	High Court or Session Court	Rigorous imprisonment, maximum 14 years, minimum 2 years, also fine.	Cumulative, Clause 382.
378	Attempt to commit robbery - - -	Idem -	Idem - - -	Rigorous imprisonment, maximum 7 years, minimum 1 year, also fine.	
379	Dacoity - - - - -	Idem -	Idem - -	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also fine.	
380	Murder in dacoity, where 6 or more engaged in committing it.	Idem -	Idem - - -	Death, or transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also fine.	
381	Being one of 6 or more persons assembled for dacoity.	Idem -	Idem - - -	See Clause 378.	
	Criminal Misappropriation of Property not in Possession.				
384	Criminal misappropriation of property not in possession.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 2 years, or fine, or both.	

385	*Criminal misappropriation of property not in* possession, knowing that it was in possession of a deceased person at his death, and has not since been in the possession of any person legally entitled to it.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.
		Criminal Breach of Trust.		
387	Criminal breach of trust - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 3 years, or fine, or both.
388	Criminal breach of trust by a public servant in the Post Office Department by misappropriating letters, &c. entrusted to him.	Idem -	Idem - - -	See Clause 385.
		Receiving Stolen Property.		
390	Fraudulently receiving stolen property knowing it to be stolen.	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	See Clause 387.
391	Fraudulently receiving stolen property knowing it was obtained by dacoity.	Idem -	High Court or Session Court	See Clause 379.
		Cheating.		
394	Cheating - - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.
395	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.
396	Cheating by personation - - -	Idem -	Idem - - -	Idem.
397	Attempting to cheat by personation - -	Idem -	Idem - - - -	See Clause 394.

CHAPTER XIX.—Offences against Property—*continued*: Cheating—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
			Fraudulent Insolvency.		
398	An Insolvent Trader fraudulently removing or concealing or delivering or transferring to any party any property to prevent the distribution of that property among his creditors.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
			Mischief.		
400	Mischief - - - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Fine to 10 times the wrongful loss thereby caused.	
401	Mischief, having taken precaution not to be detected.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
402	Mischief thereby causing wrongful loss to Rupees 5 or upwards.	Idem -	Idem - - - -	Idem.	
403	Mischief thereby causing wrongful loss to Rupees 100 or upwards.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
404	Mischief intending to enhance the value of any article, or to affect the event of any competition for the gain of any person.	Idem -	Idem - - - -	Idem.	
405	Mischief with intent to insult or annoy the person to whom wrongful loss is intended.	Idem -	Idem - - -	Idem.	
406	Mischief by killing, wounding, or poisoning any animal to the value of Rupees 10.	Idem -	Idem - - - -	Imprisonment of either description to 3 years, or fine, or both.	
407	Mischief on any channel or reservoir of water with intent, &c. to cause diminution of cultivation of agricultural produce, or a failing of the supply of water required for food, drink, &c., or for carrying on any manufacture.	Idem -	Idem - - -	Idem.	
408	Mischief on any road, bridge, or navigable channel with intent, &c. to render it less safe or easy to travel.	Idem -	Idem - - - -	Idem.	

409	Mischief with intent, &c. to cause an inundation attended with loss to Rupees 100 or upwards.	Idem -	Idem - - -	Idem.	
410	Mischief on any lighthouse or buoy with intent, &c. to render the same less useful.	Idem -	Idem - - - -	Idem.	
411	Mischief on any landmark with intent, &c. to render it less useful.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
412	Mischief by fire with intent, &c. to destroy property not within a building to the value of Rupees 100 or upwards.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also liable to fine.	
413	Mischief by fire with intent, &c. to destroy any building used as a dwelling or for the custody of property.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
414	Mischief by fire with intent, &c. that buildings used as dwellings to the number of 5 may be consumed.	Idem -	Idem - - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also liable to fine.	
415	Mischief on any decked vessel with intent, &c. to destroy it or render it unsafe.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
416	Mischief, having made preparation for causing death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint, while committing or attempt to commit or retiring after committing such mischief.	Idem -	Idem. - - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 417.
	Criminal Trespass.				
425	Criminal Trespass - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
426	House Trespass - - - -	Not bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	Cumulative, Clause 427.
428	House Trespass in order to any offence punishable with death or transportation for life.	Idem -	High Court or Session Court	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also liable to fine.	
429	House Trespass in order to any offence punishable with imprisonment.	Idem -	The High Court or Session Court, if the offence intended is triable by those Courts exclusively; otherwise by the Magistrate.	Imprisonment of either description to 1 year, added to $\frac{1}{3}$d of the longest term for the offence intended, or fine, or both.	

CHAPTER XIX.—Offences against Property—*continued*: Criminal Trespass—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5 Penalty.	6. When admitting of cumulative Punishment.
430	House Trespass, having made preparation for causing hurt, assault, &c.	Not bailable -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
431	Lurking house trespass or house breaking -	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 432.
433	Lurking house trespass or house breaking in order to committing an offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 2 years, added to ½ the longest term of imprisonment for the offence intended, and not less than ½ the shortest term, also liable to fine.	
434	Lurking house trespass or house breaking, having made preparation for causing hurt or assault, &c.	Idem -	Magistrate - - -	Imprisonment of either description, maximum 3 years, minimum 3 months, also liable to fine.	
435	Lurking house trespass, &c. by night - -	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	Cumulative, Clause 436.
437	Lurking house trespass, &c. by night, in order to any offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 3 years, added to ⅔ds of the longest term of imprisonment for the offence intended and not less than the shortest time, also liable to fine.	
438	Lurking house trespass, &c. by night having made preparation for causing hurt, &c.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also fine.	
439	Criminal trespass by opening any closed receptacle for property so as to damage it, or by opening any lock.	Idem -	Magistrate - -	See Clause 430.	
440	Being entrusted by law or under a contract with any closed receptacle for property, committing criminal trespass by opening the same with a fraudulent intention by any means by which it is damaged, or by opening any lock.	Idem -	Idem - - -	See Clause 435.	

443	Committing Forgery, or using a forged document as genuine.	Not bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
444	Forging or falsifying a valuable security, or using the forged document as genuine.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
445	Forging a document, or using a forged document as genuine for the purpose of cheating.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
446	Forging a document, or using a forged document as genuine, to harm the reputation of any party.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
447	Making any apparatus or material for engraving, or any seal, for the purpose of committing forgery.	Idem -	Idem - - -	See Clause 444.	
448	Possessing any plate, or material, or implement for engraving, or any seal, for the purpose of forgery.	Idem -	Idem - -	Idem.	
449	Possessing any forged document purporting to be a valuable security intending that it may be used as genuine.	Idem -	Idem - - -	Idem.	
450	Possessing anything not a document, but which has been marked by forgery, intending that it may be made a document purporting to be a valuable security and may be used as genuine.	Idem -	Idem - -	Idem.	
451	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will.	Idem -	Idem - - -	Idem.	
452	Fraudulently destroying or defacing or secreting a valuable security.	Idem -	Idem - - -	See Clause 446.	
453	A public servant in the Post Office Department opening any letter, &c. containing any document, without legal authority.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
454	Any person opening a fastened letter, &c. containing a document, knowing that it does not belong to him, &c.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXI.—OFFENCES RELATING TO PROPERTY MARKS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
456	Making any counterfeit property mark, or using such as genuine.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
457	Counterfeiting any property mark affixed by the lawful authority of any public servant, or using such counterfeit as genuine to cause injury to some party.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
458	Making or using any counterfeit property mark for the purpose of cheating.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
459	Putting any property mark on any property, or using the same for the purpose of cheating.	Idem -	Idem - - -	See Clause 456.	

CHAPTER XXII.—ILLEGAL PURSUIT OF LEGAL RIGHTS.

460	Taking property from a person, not fraudulently but to satisfy a just debt, under such circumstances that if the intention were fraudulent the act would be theft or robbery.	Bailable -	High Court or Session Court	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 462.
461	Taking property as in the last Clause, and *keeping* the same *fraudulently*.	Idem -	Idem - - -	The punishment to which the offender would have been liable had the taking been fraudulent.	

CHAPTER XXIII.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

463	Being bound by contract to convey or conduct any person or property from one place to another, and illegally omitting to do so.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
464	A Seaman bound to serve in a merchant vessel leaving it, or absenting himself from it, or disobeying the order of any officer thereof.	Idem -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 100, or both.	
465	Being bound to attend on or supply the want of a person who is helpless from youth, unsoundness of mind, or disease, and illegally omitting to do so.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

466	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also fine.	
467	A woman committing the same offence with a man.	Bailable -	Idem - - -	Simple imprisonment to 1 year, or fine, or both.	
468	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
	CHAPTER XXV.—DEFAMATION.				
479	Defamation - - - - -	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine, or both.	
480	Being the possessor of machinery by which defamatory matter has been printed or engraved at the time the printing or engraving was done.	Idem -	Idem - - -	Idem.	
481	Being the first seller of the printed or engraved substance by which defamation is committed.	Idem -	Idem - - -	Idem.	
	CHAPTER XXVI.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.				
483	Criminal intimidation - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
484	Criminal intimidation, having taken precaution to conceal whence the threat comes.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
485	Uttering any word, or making any sound or gesture, or exhibiting any object, to insult any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
486	Uttering any word, &c. to insult the modesty of any woman.	Idem -	Magistrate - -	See Clause 483.	
487	Uttering any word, &c. malignantly and wantonly to annoy any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
488	Appearing in a public place, &c. in a state of intoxication, and causing annoyance to any person.	Idem -	Idem - - -	Simple imprisonment to 24 hours, or fine to Rupees 10, or both.	

We humbly submit this our Third Report to Your Majesty's Royal Consideration.

JOHN ROMILLY. (L.S.)

*

EDWARD RYAN. (L.S.)

C. H. CAMERON. (L.S.)

† JOHN M. MACLEOD. (L.S.)

T. F. ELLIS. (L.S.)

ROBERT LOWE. (L.S.)

Dated the 20th day of May 1856.

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* See Letter from the Right Honourable the Lord Chief Justice of the Common Pleas, appended to this Report.

† See Minute by Mr. Macleod, appended to this Report.

LETTER from the Right Honourable Sir JOHN JERVIS, Lord Chief Justice of the Common Pleas.

47, Eaton Square,
22 May 1856.

My dear Sir,

I DECLINE to sign the Third and Fourth Reports of the Indian Law Commissioners. I consented to act as a Commissioner upon the express understanding that we were to endeavour to frame a Code of Procedure for all India, and with this understanding applied myself diligently to the subject, and, with the aid of the other Members of the Commission, succeeded in framing a Code which I believe is well calculated to meet the exigencies of the case, and which is certainly infinitely better than any that has been proposed by the authorities in India. If I had supposed that the Commission would be used to postpone legislation, and that the subject would ultimately be shelved by a reference to the Indian Government, I should not have consented to act; and considering that a slight has been cast upon the Commissioners by the course which has been taken, I decline to take any further part in the proceedings of the Commission.

I am yours, faithfully,
JOHN JERVIS.

N. B. Baillie, Esq.
Secretary, &c.

MINUTE BY MR. MACLEOD.

I AM under the necessity of dissenting from the recommendation of the majority of the Commissioners, that the Judges to be appointed by the Governor-General in Council to the bench of the proposed High Court of the North-western Provinces shall be selected from the five stated classes of persons. My reasons are the same which, in a Minute appended to our First Report, I stated for objecting to the scheme of the majority for the constitution of a High Court at Calcutta.

I dissent also now, as I did in respect of the High Court proposed to be established at Calcutta, from the recommendation to enact a rule empowering the Chief Justice to determine from time to time "what and how many Judges "of the Court, whether with or without the Chief Justice, shall from time "to time constitute Courts of Appeal, and what and how many Judges, whether "with or without the Chief Justice, shall constitute Courts of Original Juris-"diction." If it should be deemed fit, instead of giving this great power entirely to the Chief Justice, to take the course which I ventured to suggest, of giving it in the first instance to the collective body of the Judges, and ultimately to the Government, it may be advisable to empower the Lieutenant-Governor of the North-western Provinces to exercise this function of Government, subject to the control and direction of the Governor-General in Council.

There is one part of our scheme of lower Criminal Judicatories which on mature consideration appears to me so objectionable that I feel it my duty to dissent from it now, although I did not do so when I signed our First Report. I allude to the proposed rules determining who shall be Judges of the proposed two classes of Subordinate Criminal Courts.

These rules are:—"First Assistants to the Magistrate and Principal "Sudder Ameens shall be Judges of Subordinate Criminal Courts of the "First Class. Second Assistants to the Magistrates and Moonsiffs shall be "Judges of the Subordinate Criminal Courts of the Second Class."

I think that it would be much better to make the Principal Sudder Ameens and the Moonsiffs respectively the only Judges of the two classes of Criminal Courts under the Courts of the Magistrate Those Courts might then be better designated as the Criminal Court of the Principal Sudder Ameen and the Criminal Court of the Moonsiff. The Assistants to the Magistrates, I think, ought not to be by law constituted Judges of any Courts separate from the Court of the Magistrate. Whatever powers of Criminal Judicature they are employed to exercise they should exercise as Assistants to the Magistrate; and it should rest with the Government, or with the Magistrate if the Government delegate the duty to him, to determine from time to time, with respect to every Assistant, how much of the powers of the Magistrate he shall be authorized to exercise.

JOHN M. MACLEOD.

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For Her Majesty's Stationery Office.

FOURTH REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1856.

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COMMISSION.

L.S. *VICTORIA* R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years "of King William the Fourth it was provided that Commissioners to be "appointed thereunder, and to be styled the Indian Law Commissioners, "should inquire into the Jurisdiction, Powers, and Rules of the existing Courts "of Justice and Police Establishments in the Territories in the Possession and "under the Government of the East India Company, and all existing Forms "of Judicial Procedure, and into the Nature and Operation of all Laws, "whether civil or criminal, written or customary, prevailing and in force in any "Part of the said Territories, and should from Time to Time make Reports, "in which they should fully set forth the Result of their Inquiries, and should "from Time to Time suggest such Alterations as might, in their Opinion, be "beneficially made in the said Courts of Justice and Police Establishments, "Forms of Judicial Procedure and Laws, due Regard being had to the Dis-"tinction of Castes, Difference of Religion, and the Manners and Opinions "prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to "Time appointed under the said Act have, in a Series of Reports, recommended "extensive Alterations in the Judicial Establishments, Judicial Procedure, and "Laws established and in force in India, and have set forth in detail the "Provisions which they have proposed to be established by Law for giving "effect to certain of their Recommendations, and such Reports have been "transmitted from Time to Time to the said Court of Directors; but on the "greater Part of such Reports and Recommendations no final Decision has "been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

L. S. *VICTORIA* R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We kave made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

REPORT.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other matters in relation to the reform of the said Judicial Establishments, Judicial Procedure, and Laws, as might by or with the sanction of the Commissioners for the Affairs of India, be referred to us, have prepared and submitted to Your Majesty in our First Report a plan for the amalgamation of the Supreme and Sudder Courts at Calcutta, as well as a simple and uniform Code of Civil and Criminal Procedure applicable both to the High Court so formed and to all inferior Courts within the limits of its jurisdiction.

In the remarks we then made introductory to the plan which we recommended for the amalgamation of the Supreme and Sudder Courts, we intimated that the extension of the measure to the other Presidencies of India would be comparatively an easy task.

In our Second Report we adverted to the wants of India in respect of substantive Civil Law, and we submitted our views as to the best means of supplying those wants.

Our Third Report comprised the plan we propose for the North-western Provinces of the Presidency of Bengal, in order to bring them under a system of judicature and procedure uniform, as far as the difference of circumstances will permit, with the system recommended by us for the Lower Provinces of the same Presidency.

We have received instructions from the Commissioners for the Affairs of India, directing us to apply ourselves to the preparation of a Report for Madras and Bombay similar to that which we have already submitted for Bengal, with such modifications as the difference in the existing systems of the Courts of those Presidencies may render necessary. As the measures we recommend for Madras are in all respects the same as those we recommend for Bombay, we consider it unnecessary to submit separate Reports for those Presidencies; and accordingly we now complete our Reports in regard to Judicatories, Jurisdiction, and Procedure, for the several Presidencies of India.

The same majority of the Commissioners which agreed in recommending that the High Court at Calcutta should be constituted in the manner proposed in our First Report think that the High Courts to be established at Madras and Bombay should also be constituted in that manner, except only as regards the number of Judges.

It is recommended by that majority that the High Courts at Madras and Bombay shall never consist of less than five members in each, of whom two shall be appointed by the Crown, and the rest by the Governor in Council of the Presidency; and that the Judges shall be selected from the same classes as in the case of the High Court of Calcutta.

The Civil Courts of the East India Company in the Presidency of Madras, under the Sudder Court, are those of the Zillah Judge, the Assistant Judge, the Subordinate Judge, the Principal Sudder Ameen, the Sudder Ameen, the District Moonsiff, the Village Moonsiff, and the District and Village Punchayets. The powers exercised by these several tribunals are to be found in the outlines of the constitution and procedure of the existing Courts given in Appendix B, No. 5, to our First Report, pp. 240–242. The Zillah Judge has primary jurisdiction without pecuniary limitation, the Subordinate Judge and Principal Sudder Ameen have jurisdiction to the extent of 10,000 rupees, the Sudder Ameen to the extent of 2,500 rupees, the District Moonsiff to the extent of 1,000 rupees, and the Village Moonsiff to the extent of ten rupees. The District and Village Punchayets are Courts of arbitration, summoned

respectively by the District and Village Moonsiffs for the disposal of cases which may be referred to them with consent of parties.

The Assistant Judge is an officer whom the Governor in Council is authorized by an Act (No. VII.) passed in the year 1843 by the Council of India to appoint to any Zillah Court. His duty is limited to the hearing of such appeals as may be referred to him by the Zillah Judge. The power of appointing such a Judge has been very sparingly exercised by the Madras Government, there appearing from a register of 1855 to be only one person then holding such appointment in the entire Presidency. As the Assistant Judge is appointed merely for a temporary purpose, that of reducing a heavy file of appeal cases, we have not included him in our general system of Judicatories; but we are not aware of any reason why the power of occasionally appointing such an officer should be taken from the Madras Government.

The Zillah, Assistant, and Subordinate Judges are members of the Covenanted Service, the Judges of the other grades are members of the Uncovenanted Service.

The Law Commissioners employed in India, in a Report submitted by them to the Government of India, dated 17th May 1843, recommended that the Civil Jurisdiction of the Principal Sudder Ameen in Madras should be free from any pecuniary limitation as in Bengal and Bombay. We see no reason for putting the Principal Sudder Ameen in Madras upon a footing different from that on which officers of the same class are placed in the other Presidencies, and are of opinion that the recommendation should be adopted.

The Subordinate Judge exercises the same civil jurisdiction as the Principal Sudder Ameen. In some districts there are Subordinate Judges; in others Principal Sudder Ameens; but officers of the two classes are not employed in the same district. As already stated, we propose to raise the primary jurisdiction of the Principal Sudder Ameen, and to place it on a level with that of the Zillah Judge. The office of Subordinate Judge we propose to abolish, and to appoint Principal Sudder Ameens where Subordinate Judges now exist. We suggest, however, that before there is any legislation on this point, the proposal we have made be particularly referred to the Government of the Madras Presidency, and its sentiments on it ascertained. Should it be deemed expedient to continue the class of officers designated Subordinate Judges, a very slight alteration will render applicable to their Courts the rules in our code relating to jurisdiction and procedure which are applicable to the Courts of the Principal Sudder Ameens.

We concur also in the recommendation made by the Law Commissioners employed in India, in the Report to which we have already adverted, that the office of Sudder Ameen at Madras should be abolished. From a statement before us it appears that, in the year 1850, the large number of 11,924 cases was disposed of by the Sudder Ameens, but of these no less than 11,757 were within the jurisdiction of the District Moonsiff, leaving only 167 cases between the highest point of the jurisdiction of the District Moonsiff and that of the Sudder Ameen, that is to say, between 1,000 and 2,500 rupees. The office seems to be unnecessary under existing circumstances, and will be more so in the event of the adoption of the recommendation we are about to make with regard to the District Moonsiff.

The District Moonsiffs (so called from there being another class of Moonsiffs in the Madras Presidency) occupy much the same position in Madras as the Moonsiffs do in Bengal and Bombay, though in all the Presidencies the Judges of this class have different powers in respect of pecuniary jurisdiction. We recommend that the jurisdiction of the District Moonsiffs at Madras (whom for purposes of convenience we have designated Moonsiffs in our Code of Procedure) should be raised to 2,500 rupees, the extent which we have recommended with respect to officers of the same class in Bengal.

The Village Moonsiff, as already stated, has jurisdiction in suits for money or other personal property, the amount of which does not exceed ten rupees. His decisions are not subject to any appeal, but may be annulled by the Zillah Judge on proof of a charge of corruption or partiality preferred within a limited period. The Village Moonsiffs settle a great many matters of petty litigation, the number of their registered decisions in the year 1850 appearing to have been near eleven thousand. The Punchayets are rather institutions for effecting arbitration than judicial tribunals, for they are held

only on the application of both parties in a suit. From the information before us it appears that the number of disputes settled by them is quite insignificant, and has always been small since these institutions were first made the subject of legislation by the Madras Government in the year 1816. We think it not improbable that the countenance given to Punchayets by the Government in enacting the regulations of 1816 has had good effects, of which no trace is to be found in returns of regularly registered decisions. Trifling as is the number to which those registered decisions seem to have dwindled, we see no reason why the Punchayet regulations should not be allowed to remain in force until the local government shall, after due inquiry and consultation, have arrived at the conclusion that they ought to be repealed. Without the least clashing with our scheme of judicatories, the regulations respecting Village Moonsiffs, as well as those respecting both District and Village Punchayets, can be left as they are. A very slight alteration in the original wording of some of our rules will guard that scheme from being construed to be incompatible with the existence of other judicatories besides those contained in it.

On the criminal side, the Session Judge had the same power as the Session Judge in Bengal. The Subordinate Judge and Principal Sudder Ameen exercise powers of punishment to the extent of two years imprisonment, which are nearly the same as those of the magistrate in Bengal; while the magistrate in the Madras Presidency can in no case pass sentence of imprisonment exceeding six months, with corporal punishment in some cases, and in other cases with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months. We propose to give to the magistrate and the Principal Sudder Ameen in Madras the same powers as are proposed to be conferred respectively upon officers of those classes in the Bengal Presidency.

We observe that, by a recent Act of the Indian Legislature (No. XII. of 1854), the Governor in Council of Madras is authorized to empower one or more of the District Moonsiffs in any zillah of the Presidency to hear and determine complaints or prosecutions for certain petty offences, and to inflict upon the offenders the punishments which magistrates are authorized to inflict for the same offences. Our scheme provides for vesting all District Moonsiffs with jurisdiction in criminal cases.

There is, in the Presidency of Madras, a class of officers of the regular Civil Service, designated as "Sub-Collectors and Joint Magistrates." We have not thought it necessary to make special mention of these officers in our scheme of Criminal Judicatories. We, however, think it right to state here, that in their capacity of Joint Magistrate we regard them as Magistrates; and that we contemplate their being invested with the same powers of trying and punishing offences as the Principal Magistrates.

In the Presidency of Madras, the Tahsildars (very important officers of revenue and police), the heads of villages, and in certain instances landholders, are invested with power to punish certain petty offences. This, in our opinion, is very objectionable even now, as the power thus conferred is very liable to abuse, and will be needless when authority to punish petty offences shall have been given generally to the District Moonsiffs.

In the districts of the Presidency of Bombay, to which the general systems of Courts and Procedure of the Presidency have been extended, there are various classes of officers under the Sudder Court exercising civil jurisdiction, as detailed in Appendix B of our First Report, page 252. The ordinary Courts, however, for the administration of civil justice in each zillah, are those of the Zillah Judge, the Principal Sudder Ameen, the Sudder Ameen, and Moonsiff; the two former exercising jurisdiction without pecuniary limitation, the Sudder Ameen to the extent of 10,000 rupees, and the Moonsiff to the extent of 5,000 rupees.

We find, on referring to the statements from Bombay for the year 1851, that there, as well as at Madras, the Sudder Ameens are chiefly employed in trying cases within the jurisdiction of the Moonsiffs, and which therefore ought to be disposed of by them. We recommend that the office of Sudder Ameen be abolished at Bombay as at the other Presidencies.

The Moonsiffs in Bombay exercise a much higher pecuniary jurisdiction than do the officers of the same class in Bengal and Madras. The number of suits coming before them above the value of 2,500 rupees is very small,

and we recommend that they be placed upon the same footing as the Moonsiffs at the other Presidencies.

Besides the Courts above enumerated, there are in Bombay those of the Joint Judge and Assistant Judge. The Joint Judge is appointed whenever the state of business in any zillah may require the assistance of such an officer, and is vested with coextensive powers and a concurrent jurisdiction with the Zillah Judge. He is in fact a second Zillah Judge, and the rules of our Procedure applicable to the Zillah Judge will be equally applicable to the Joint Judge.

The Assistant Judges are of two classes,—senior and junior. The former appear to be chiefly employed in hearing appeals, which under the system proposed by us will be carried to the High Court or to the Zillah Judge, and the latter in trying original cases, which under the same system will be tried by the Moonsiffs. We suggest that the opinion of the Government of Bombay be taken as to the necessity of retaining the office of Assistant Judge.

The scheme of Civil Courts which we have prepared does not contain any provision with respect to the revenue officers who exercise civil jurisdiction in certain matters; or to the agents and their assistants employed in certain of the territories under the Government of Bombay. The collectors of revenue and the agents, in regard to their powers as Civil Judges, occupy respectively much the same position in that Presidency as the collectors in the districts of Bengal and the officers employed in the tracts of country denominated the Non-regulation Provinces occupy in the Presidency of Bengal. Our Code of Procedure is intended to apply primarily to the High Courts, and to the Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs, and we believe it will be found to be equally applicable to the Courts of the agents and assistant agents.

The judicial powers of the criminal authorities of the Bombay Presidency will be found at pages 259 and 260 of our First Report. The Judges of the Sudder Foujdarry Adawlut have concurrent jurisdiction with the Session Judges for the trial of all serious offences, but this jurisdiction is rarely exercised. The Session Judge has authority to try all offences committed within his jurisdiction, and to adjudge punishment to the full extent authorized by the regulations for each offence. The Assistant Session Judge may inflict punishment to the extent of two years, and the magistrate, joint magistrate, and assistant magistrate to the extent of one year's imprisonment; but all sentences for imprisonment above three months passed by the assistant magistrate must be referred to the magistrate for confirmation.

The Native Judges in the Presidency of Bombay are not allowed to exercise criminal jurisdiction in any case. The subject of vesting them with such jurisdiction has been repeatedly considered, and in the Report to which we have already adverted, the Law Commissioners employed in India express it as their opinion that "it is expedient to employ the Principal Sudder "Ameens in the administration of criminal justice. Entrusted as they are, "and have been for a long time, with power to adjudicate in matters of pro-"perty without any limitation, we see no reason to hesitate as to investing "them with penal authority." The same Commissioners recommended that the Moonsiffs in the Bengal Presidency should be invested with criminal jurisdiction, and did not extend the recommendation so as to embrace the Moonsiffs of Madras and Bombay, merely because in those Presidencies the heads of the district police and the heads of villages have a certain jurisdiction in petty cases. In these views of the Commissioners we concur. We have already stated in the case of Madras that in our opinion the exercise of criminal authority by heads of district police and of villages is very liable to abuse. The remark applies of course with equal force to the same classes of persons in Bombay. We recommend that this power be taken away, and that the native judicial officers in the Presidency of Bombay be vested with criminal jurisdiction to the same extent as we propose in regard to the officers of corresponding classes in the Presidencies of Bengal and Madras.

In Bombay, as in Madras, the Revenue and Police functions are combined in the same persons.

We think that the Criminal Courts in Bombay may be placed in every respect upon the same footing as the like Courts in Bengal and Madras. If this measure be carried into effect, the enhanced jurisdiction of the magis-

trates of the Town of Bombay will render unnecessary the continuance of the Court of Quarter Sessions, a tribunal which has long ceased to exist for any practical purpose in the other Presidency towns.

Our Code of Criminal Procedure will be applicable to every Court which shall be required to administer the law of the Penal Code prepared by the Law Commissioners in India.

For our views on various points, as well as for further information in regard to the existing systems of judicature and procedure in the Presidencies of Madras and Bombay, we refer to the notes and appendices of our First Report, which we consider it unnecessary to add to our present Report.

High Court.

I.

There shall be one High Court of Judicature at Madras [*Bombay*]. Institution of the High Court.

II.

Such Court shall consist of not less than five Judges, of whom two shall be appointed by the Crown, and the remainder by the Governor in Council; and one of such Judges shall be appointed Chief Justice by the Crown. Constitution of the High Court.

The Judges to be appointed by the Crown shall be selected from barristers of England and Ireland and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years; or,

4th. Persons who have been vakeels for a period of ten years; or,

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

III.

Every vacancy happening from time to time in the office of any judge who shall have been appointed by the Crown shall be filled up by the Crown, and every vacancy in the office of any judge appointed by the Governor in Council shall be filled up by the Governor in Council. Vacancies how to be filled up.

IV.

The judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor in Council to direct the suspension of any judge of the High Court until the pleasure of the Crown be known. Judges to hold office during pleasure of the Crown. Governor in Council may suspend.

V.

Every judge of the High Court, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:— Declaration on entering upon office.

> " I, *A.B.*, appointed a judge of the High Court at Madras [*Bombay*], do
> " solemnly declare that I will faithfully perform the duties of my office
> " to the best of my ability, knowledge, and judgment."

VI.

The High Court shall use a seal such as shall be prescribed by the Governor in Council. Seal.

VII.

The High Court shall prepare and submit for the approval of the Governor in Council a statement of such establishment of ministerial officers as may be Ministerial officers.

necessary for the due execution of all the powers and authorities committed to it, exhibiting in detail the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such further particulars as the Governor in Council may require. When such statement has been approved by the Governor in Council, the High Court shall proceed to make the appointments to the several offices.

VIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the High Court.

The High Court shall have power to make all the general rules for the due exercise of the civil and criminal jurisdiction vested in that Court, and also to frame forms for every proceeding in the said Court for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form, and the rules so made, and the forms so framed, shall be used and observed in the said Court; provided, that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are carried into effect, have received the sanction of the Governor in Council.

IX.

In admitting advocates, vakeels, and attorneys.

The High Court shall be empowered to approve, admit, and enrol such and so many advocates as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and plead for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many vakeels as to the said High Court shall seem meet, who shall be and are hereby authorized to appear, plead, and act for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many attorneys-at-law as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and act for the suitors of the said High Court.

X.

In making rules for the qualification, &c. of advocates, vakeels, and attorneys.

The High Court shall have power to make rules for the qualification and admission of proper persons to be advocates, vakeels, or attorneys-at-law of the said High Court, and shall be empowered to remove, on reasonable cause, the said advocates, vakeels, or attorneys-at-law; and no person or persons whatsoever but such advocates, vakeels, or attorneys-at-law shall be allowed to appear for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such advocates or vakeels shall be allowed to plead for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such vakeels or attorneys-at-law shall be allowed to act in any other respect than as herein-before mentioned, for any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction.

XI.

Appellate jurisdiction.

The High Court shall have all the appellate jurisdiction now exercised by the Sudder Adawlut of Madras [*Sudder Dewanny Adawlut of Bombay*], and a new appellate jurisdiction from the judges of the High Court exercising original jurisdiction as herein-after provided.

XII.

High Court to superintend all Civil Courts.

The High Court shall have superintendence over all the Courts of civil judicature subject to its appellate jurisdiction, with power to call for returns, and to direct the transfer of any civil suit or appeal from any Court to any other Court of equal or superior jurisdiction.

XIII.

Powers of the High Court in making rules of practice, and

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books,

entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Governor in Council. framing forms, &c. for the Subordinate Civil Courts.

XIV.

The High Court shall have original civil jurisdiction locally co-extensive with that of the present Small Cause Court; provided that it shall be in the power of the Governor in Council, from time to time, to extend the local limits of such jurisdiction as he shall think fit. Local limits of original jurisdiction.

XV.

The High Court shall have the like civil and maritime jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty, and the like civil jurisdiction as that now possessed by the Supreme Court as a Court of Ecclesiastical Jurisdiction, and as a Court for the Relief of Insolvent Debtors. Admiralty, ecclesiastical, and insolvency jurisdictions.

XVI.

The High Court shall have the like jurisdiction as that now possessed by the Supreme Court in suits against the East India Company. Jurisdiction in suits against the East India Company.

XVII.

The High Court, in the exercise of its original jurisdiction, shall be empowered to receive, try, and determine suits of every description, provided the landed or other real property to which the suit may relate shall be situated, or, provided in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall dwell, or carry on business, or work for gain, within the local limits of the ordinary original jurisdiction of the said Court, except that it shall not have any jurisdiction in cases in which the debt, or damage, or value of the property sued for, does not exceed one hundred rupees, and which fall within the jurisdiction of the Small Cause Court. Original jurisdiction as to suits.

XVIII.

The Small Cause Court at Madras [*Bombay*], besides the matters already excepted from its jurisdiction, shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage. Jurisdiction of Small Cause Court.

XIX.

No suit in the High Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief. Declaratory suit.

XX.

The High Court shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim. High Court not to entertain original suits already heard and determined.

XXI.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of the High Court. No person excepted from jurisdiction by reason of place of birth, or of descent.

XXII.

More than one Court of appellate or original jurisdiction constituted by Judges of the High Court may be sitting at the same time, More than one Court may be sitting at the same time.

XXIII.

Courts of appellate and original jurisdiction, how to be constituted.

The Chief Justice shall from time to time determine what and how many judges of the Court, whether with or without the Chief Justice, shall constitute Courts of appeal; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction.

XXIV.

Appeal from the High Court of original jurisdiction to the High Court in its appellate jurisdiction.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more judges of the High Court to one of the Appellate Courts constituted by judges of the High Court.

XXV.

Judges may be sent on special commission.

The judges of the High Court may be sent into the mofussil on special commission by the Governor in Council.

Criminal Jurisdiction.

XXVI.

High Court to exercise powers of Foujdary Adawlut [*Sudder Foujdary Adawlut*].

The High Court shall have all the jurisdiction now exercised by the Foujdary Adawlut of Madras [*Sudder Foujdary Adawlut of Bombay*], as a Court of Appeal, and also as a Court for the hearing of cases referred by the Session Judges, and for the revision of cases tried by the criminal Courts.

XXVII.

To hear appeals from decisions of magistrates of Madras [*Bombay*].

The High Court shall be empowered to hear appeals from decisions of the Magistrates of Madras [*Bombay*] in criminal trials.

XXVIII.

High Court to superintend subordinate Criminal Courts.

The High Court shall have superintendence over all the Courts of criminal judicature subject to its appellate jurisdiction, and over all criminal Courts subordinate to such Courts, with power to call for returns, and to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

XXIX.

Powers of the High Court in making rules of practice and framing forms for the subordinate Criminal Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the Criminal Courts subject to its superintendence, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided, that such rules and forms be not inconsistent with the provisions of any law in force; and shall, before they are issued, have received the sanction of the Governor in Council.

XXX.

Local limits of original jurisdiction.

The High Court shall have original criminal jurisdiction within the local limits of its original civil jurisdiction.

XXXI.

Admiralty jurisdiction.

The High Court shall have the like criminal jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty.

XXXII.

Jurisdiction as to persons in Madras [*Bombay*].

The High Court, in the exercise of its local original jurisdiction, shall be empowered to try all persons brought before it on charges preferred by the Advocate General, or by the Magistrates of Madras [*Bombay*], or by any private person who shall have first obtained the leave of the Court for that purpose.

XXXIII.

The High Court shall have original criminal jurisdiction over all persons residing within the limits of its general jurisdiction, and shall have authority to try, at its discretion, any persons brought before it on charges preferred by the Advocate General, or by any Magistrate or other officer specially empowered by the Government to act in this behalf, or by any private person who shall have first obtained the leave of the Court for that purpose.

As to persons within its general jurisdiction.

XXXIV.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of the High Court.

No person excepted from jurisdiction by reason of place of birth or of descent.

XXXV.

More than one Court of appellate or original jurisdiction, or for the hearing of cases referred by the Session Judges, or for the revision of cases called for by the High Court, may be sitting at the same time.

More than one Court may be sitting at the same time.

XXXVI.

Every Court for the hearing of cases referred by the Session Judges shall consist of three judges.

Courts for hearing referred cases.

XXXVII.

The Chief Justice shall, from time to time, determine what and how many judges, whether with or without the Chief Justice, shall from time to time constitute Courts of appeal; and what judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction.

Courts of appellate and original jurisdiction, &c., how to be constituted.

XXXVIII.

There shall be no appeal to the High Court from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more judges of the High Court. It shall, however, be at the discretion of the Court to reserve any point of law for the opinion of the High Court.

No Appeal.

Court may reserve points of law.

XXXIX.

Provided, that on its being certified by the Advocate General, that in his judgment there is error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which have been decided by the said Court should be further considered, the High Court shall review the case, or such part of it as may be necessary, for the purpose of determining the question or questions raised by the certificate of the Advocate General.

High Court to review on certificate of the Advocate General.

XL.

The judges of the High Court may be sent into the Mofussil on Special Commission by the Governor in Council.

Judges may be sent on special commission.

Power of the Government to call for Records, &c.

XLI.

It shall be competent to the Government to call for records, returns, and statements, from the High Court, or from any other civil or criminal Court, in such form and manner as it may deem proper.

Government may call for records, &c.

Civil Courts subordinate to the High Court.

I.

Grades of district judges.

The following shall be grades of Judges in each zillah or district:—
Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

The Principal Sudder Ameen was so called to distinguish him from the Sudder Ameen. With the abolition of the office of Sudder Ameen, the occasion for the distinctive title of the officer of the higher grade will cease. The position of the Principal Sudder Ameen, however, is one of high rank in the estimation of the native community, and some importance is attached to the title by which he is designated. We have therefore retained it. By the term "Moonsiff," in relation to the Madras Presidency, we mean the class of judges corresponding with the present District Moonsiffs.

II.

Their Courts, how to be denominated.

The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

III.

Their appointment, suspension, and removal.

The appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor in Council shall, from time to time, pass.

IV.

Declaration on entering upon office.

Each Civil Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:

"I, *A.B.*, appointed of the Court of
"do solemnly declare that I will faithfully perform the duties of my
"office to the best of my ability, knowledge, and judgment."

V.

Seal.

Each Civil Court is to use a seal, such as shall be prescribed by the Government.

VI.

Ministerial officers.

It shall rest with the Governor in Council, upon the report of the High Court, made after such communication with the Zillah authorities as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to the several Civil Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor in Council may deem proper. Upon the receipt of the instructions of the Governor in Council, the Judges of the Civil Courts shall make the appointments to the several offices of their respective establishments.

VII.

Civil Courts have cognizance of all suits unless specially barred,

The Civil Courts shall be empowered to take cognizance of all suits and complaints of a civil nature, with the exception of suits their cognizance of which is barred by any Act of Parliament, or by any regulation of the Madras [*Bombay*] Code, or by any act of the Council of India.

VIII.

unless already heard and determined.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

IX.

Government officers who are subject to the Civil Courts for official acts.

The Civil Courts are empowered to take cognizance of suits against collectors of the revenue and their assistants and native officers, salt agents and their assistants and native officers concerned in the manufacture of salt, opium agents and their assistants and native officers concerned in the manufacture of opium, collectors of the customs and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, for acts done in their official capacity.

X.

No Person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

XI.

Moonsiffs, their jurisdiction.

The Moonsiffs shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts under the following pecuniary limitations; provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits to which their respective jurisdictions may extend:

Pecuniary limitation.

For money or other personal property not exceeding in amount or value the sum of two thousand five hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action; but any plaintiff having cause of action for debt or damages above the sum of two thousand five hundred rupees may abandon the excess, and thereupon he shall, on proving his case, have a decree for an amount not exceeding such sum, and such decree shall be in full discharge of all demands in respect of such cause of action:

For the property or possession of land or other real property, the computed value of which shall not exceed two thousand five hundred rupees.

XII.

Jurisdiction in cases of set-off.

If a defendant claim to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the Moonsiff, the Moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum which upon inquiry shall appear to be due to either party.

XIII.

Principal Sudder Ameens, their jurisdiction.

The Principal Sudder Ameen shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts in which the amount claimed or the computed value of the property may exceed the sum of two thousand five hundred rupees, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits of the district over which his jurisdiction may extend.

XIV.

To exercise the powers of Moonsiff at the Sudder station of the district.

The Principal Sudder Ameen shall further exercise the same powers as the Moonsiff within the limits of the territorial division now included in the local jurisdiction of the Moonsiff fixed at the sudder or head station of the district.

The terms of this rule may require to be modified to meet the circumstances of different districts. We think it expedient to leave these details to be arranged by the Legislature of India.

XV.

Zillah Judge, original jurisdiction.

The Zillah Judge shall have concurrent original jurisdiction with that of the Principal Sudder Ameen in regard to all suits above the value of two thousand five hundred rupees; provided, however, it shall be competent to a Zillah Judge, on cause shown, to receive, try, and determine a suit within the pecuniary limitation assigned to the Moonsiff, or to direct the transfer of any suit from any Court to any other Court of equal or superior jurisdiction in his district.

XVI.

Moonsiff's jurisdiction excluded when there is no specification of value.

The Zillah Judge and the Principal Sudder Ameen shall have concurrent jurisdiction, and the Moonsiff shall not have jurisdiction, in cases in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

XVII.

Suits for real property situate within different jurisdictions of the same Zillah.

A suit for land or other real property situate within the limits of a single Zillah, but within the jurisdiction of different Moonsiffs' Courts, may, with the previous sanction of the Judge of such Zillah, be brought in any Court within the limits of which any portion of such property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court.

XVIII.

Suits for real property situate in different Zillahs.

In like manner, if the property be situate within the limits of different Zillah Courts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property in suit is situate, but in such case the Court in which the suit is brought shall apply to the High Court for authority to proceed with the same; and if the suit is brought in the Court of the Principal Sudder Ameen or Moonsiff, the application shall be submitted, through the Zillah Judge, to whom such Principal Sudder Ameen or Moonsiff is subordinate.

XIX.

Suits for real property situate partly within the jurisdiction of the High Court, and partly in another jurisdiction.

If the property be situate partly within the limits of the ordinary original jurisdiction of the High Court, and partly within those of any other Court or Courts, the suit may be brought either in the High Court or in any other Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property is situate. If the suit is brought in any other Court than the High Court, application for authority to proceed with the same shall be made to the High Court, as directed in the last preceding article.

XX.

Declaratory suit.

No suit in any of the Civil Courts shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

XXI.

By whom judicial decisions may be revised.

The judicial decisions of the Courts of Justice shall be subject to revision only by the constituted Courts of appellate jurisdiction, or by themselves under the rules of the code of procedure applicable to reviews of judgment.

LAW TO BE ADMINISTERED.

In all cases in which a suit is brought in the first instance in the High Court, or in which it is removed from the Court of Small Causes at Madras [*Bombay*] to the High Court, or a question of law or equity is reserved by the Judges of the Court of Small Causes at Madras [*Bombay*] for the opinion of the Judges of the High Court, the Court shall (until otherwise provided) be guided in its decisions by the laws administered by Her Majesty's Supreme Court of Judicature at Fort Saint George in Madras [*at Bombay*], at the time of the passing of this Act, except in so far as may be inconsistent with anything herein contained. And in all cases in which a suit is brought in the first instance in any Court other than the High Court, or the Court of Small Causes at Madras [*Bombay*], the Courts shall (until otherwise provided) be guided in their decisions by the laws and regulations in force at the time of the passing of this Act at the place where such Court is situate, except in so far as may be inconsistent with anything herein contained.

Proposed Code of Procedure for the Courts of Civil Judicature in Madras and Bombay.

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CHAPTER I.

Preliminary Rules.

I.

No institution stamp, fee, or deposit.

No stamp duty, fee, or deposit shall be required on the institution of any civil suit, or on the entry of any appeal from the decision or order of any Civil Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Civil Court, except such fees or charges as may be set forth in tables to be prepared as herein-after provided.

II.

Tables of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Civil Courts comprised in any zillah by the Judge of the zillah, under the direction of the High Court, and for the High Court by the Judges thereof. And a copy of the table of fees and charges so prepared, which may be applicable to any Civil Court, shall, after the same shall have received the sanction of the Governor in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him, than such fees or charges as may be set forth in such table.

III.

Parties may appear in person or by attorney.

All applications to any Civil Court, and all appearances of parties in any Civil Court, except when otherwise specially provided, may be made by

the party in person, or through an attorney or vakeel duly authorized to act on his behalf. The authority shall in all cases be in writing, and shall be filed with the proper officer of the Court. When so filed, it shall be considered to be in full force until revoked, and the revocation shall be intimated in writing to the officer; and all notices given to, or processes served on, the attorney or vakeel of either party, or left at the office or ordinary residence of such attorney or vakeel, relative to the suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the attorney or vakeel represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

IV.

Party appearing in person to enter his name and address in a book.

In all cases in which a party shall appear in person, and the cause shall not be decided on the day of his appearance, he shall enter his name and place of abode in a book to be kept for that purpose by the proper officer of the Court, if his place of abode shall be within a radius of eight miles from the Court-house; otherwise, he shall enter in the said book the name and place of abode of some person residing within such distance of the Court-house, on whom he may wish that all notices or process in the cause should be served on his behalf. And all notices or process relative to the suit which may thereafter be left at the place so entered in the register shall be deemed good service on the party, and shall be as effectual for all purposes relative to the suit as if the same had been served on the party himself in person, unless the Court shall otherwise direct. If no such entry as aforesaid shall be made in the said register, the fixing up of such notices or process in some conspicuous place in the office of the clerk or other proper officer of the Court, and also in some conspicuous place in the Court-house, shall in like manner be deemed to be good service, and shall be as effectual for all purposes relative to the suit as if such entry had been made, and the notice or process had been left at the place so entered in the register.

V.

Native officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them;

When a native officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending it in person, he may authorize any member of his family or any other person to conduct and manage the suit or the defence, as the case may be, in his stead. The authority shall in all cases be in writing, and shall be signed by the native officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed with the proper officer of the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the native officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

VI.

Who may appear personally, or appoint an attorney or vakeel.

Any person who may be authorized, as in the last preceding Article mentioned, by a native officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the native officer or soldier could do if present; or he may appoint an attorney or vakeel of the Court to prosecute or defend the suit on behalf of such native officer or soldier. And all notices or process relative to the suit which may be served upon any person who shall be so authorized as aforesaid by a native officer or soldier, or upon any attorney or vakeel who shall be appointed as aforesaid by such person to act for or on behalf of such native officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on an attorney or vakeel directly appointed by him.

CHAPTER II.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

VII.

All suits shall be commenced by a summons to the defendant. Suits to commence with summons.

VIII.

The application for a summons shall be made to the Clerk or other proper officer of the Court by the party in person, or through one of the attorneys or vakeels of the Court, duly authorized to act on his behalf, by an instrument in writing, which shall be delivered to the officer at the time of making the application. Summons how to be applied for.

IX.

The application shall be accompanied by the following particulars, distinctly written in the language in ordinary use in proceedings before the Court, viz.— Particulars to be given with the application.

1. The name, description, and place of abode of the plaintiff.

2. The name, description, and place of abode of the defendant, so far as they can be ascertained.

3. The relief sought for, the subject of the claim, the cause of action, and when it accrued. The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of Company's rupees due on (a bond, tumussook, hoondee, or bill of exchange, as the case may be) for the sum of Company's rupees. , bearing date the day of , and payable on the day of .

If the suit be for the price of goods sold:—Payment of Company's rupees on account of maunds of (rice, indigo, sugar, or as the case may be), sold on the day of , and the price of which became payable on the day of .

If the suit be for damages for slanderous words:—Payment of Company's rupees , on account of injury done to the Plaintiff, by calling him on the day of , a (thug, or thief, or as the case may be), or by causing to be published on the day of , in a newspaper entitled the , (or otherwise as the case may be) the following slanderous words concerning him (stating them at length, as the case may be).

4. When the claim is for any property other than money, its estimated value Company's rupees. The following are instances:

If the suit be for a Zemindary, or share in a Zemindary;—Possession of a Zemindary, or of share in a Zemindary, called situate in the zillah of , the Government Revenue of which is Company's rupees , and estimated value Company's rupees , of which the Plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so,) on the day of ; or to which the Plaintiff became entitled by inheritance from , on or about the day of .

5. When the claim is for a declaration of right, or the fulfilment of a duty in which the plaintiff is interested, or that the defendant be restrained from the committal of any breach of a contract or other injury to the plaintiff, or for anything not susceptible of pecuniary valuation, it shall not be necessary to specify the estimated value of any property or any sum of money by way of damages.

6. In all suits by or against the Government, or one of its officers in his official capacity, or the East India Company, or any other Corporation, or any Company authorized to sue and be sued in the name of an officer or Trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or "The East India Company," or name of the Corporation or name or names of the officer or Trustees of the Company, shall be inserted in Nos. 1 and 2, instead of the name and description of the

Plaintiff or Defendant. But in all other cases it shall be necessary to specify the names of all the parties.

This Code of Procedure contains no rules on the subject of the valuation of property in civil suits. We think it our most expedient course to leave it to the Government of India to decide whether any, and what, alterations should be made in the law on this subject, in the event of our recommendation in regard to the abolition of the institution fee being adopted.

X.

Application to be rejected if the claim is beyond the jurisdiction of the Court.

If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court the officer shall refuse to receive the application.

XI.

Reference to be made to the Judge in a suit for property in different jurisdictions.

If the suit be for land or other real property, situate partly within the jurisdiction of the Court, and partly within the jurisdiction of some other Court or Courts, the officer shall submit the application for the order of the judge.

XII.

When the claim is within the Court's jurisdiction, the officer shall enter the particulars in a Register.

If the amount or estimated value of the claim, as stated by the plaintiff, be within the jurisdiction of the Court, the above particulars shall be entered by the officer in a book to be kept for the purpose, and called the Register of Civil Suits, and the entries shall be numbered in every year according to the order in which the application shall be made.

XII.

Form of the Register.

The Register shall be kept in the form contained in the Schedule (A.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all courts of justice in India.

XIV.

Document of debt should be shown to the officer.

When the plaintiff's demand is founded on any instrument in writing, as constituting or acknowledging the demand, such as a bond, tumussook, bill of exchange, hoondee, ikrar, or acknowledgment, the same shall be produced and shown to the officer at the time of applying for the summons, and a copy of the instrument shall be delivered to him at the same time, for the purpose of being served with the summons on the defendant; and if such instrument shall not be produced it shall not be received in evidence on behalf of the plaintiff at the hearing or trial of the cause, without the sanction of the Court. When there is more than one defendant, a copy of the instrument for each defendant shall be delivered to the officer; unless all the defendants are members of one joint and undivided Hindoo family, in which case one copy of the instrument will be sufficient.

XV.

Summons may be for settlement of issues, or final disposal.

The person applying to the officer for a summons shall state at the time of his application, whether he requires a summons for the first hearing and settlement of issues or for the final disposal of the cause.

Of Summoning the Defendant.

Form of Summons.

XVI.

The summons shall be in the following form, or to the following effect:

No. of Suit .

In the Court of the of
holden at

Plaintiff.
Defendant.

[Name, description, and address of Defendant.]

You are hereby summoned to appear at this Court on the day of at in the forenoon, to answer [name, description, and address, of Plaintiff,] to a claim for [here state the particulars, as in the Register referred to in Article XIII.]

Dated the day of

(Signature.)

Costs of summons and service

This summons must be served on or before the day of

N.B.—See notice at back.

XVII.

Special directions shall be indorsed on the summons, which, if the application be for a summons for the first hearing, and settlement of issues, shall be as follows :— Directions to be indorsed on summons to settle issues.

1. If you admit the Plaintiff's claim, you must deliver your admission in writing, under your signature, to the Officer of the Court, together with the costs marked on the summons, five clear days before the day for appearing to this summons; but you may enter your admission at any time on or before the day of appearing, subject to the payment of further costs.

2. If you admit any part of the Plaintiff's demand, and pay to the officer of the Court the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless the Plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

3. If you deny the Plaintiff's claim, or any part of it, you must appear on the day fixed in the summons, and be prepared to answer all questions that may be put to you by the Judge, relating to the Plaintiff's demand, and your liability thereto, and to state any objections which you may have to make to the same.

4. You must bring all documents or instruments in writing of any description, which you may wish to produce in explanation, or as evidence of your defence to the suit, or of any counter-claim against the Plaintiff which you may desire to make a set-off to his demand against you; and, in particular, you must bring with you all or any instruments in writing or things which may be specified in any notice to produce that accompanies this summons, or that may be served on you within a reasonable time before your appearance thereto.

5. If you do not appear in person, you must employ one of the Attorneys or Vakeels of the Court to appear in your stead, and must furnish him with the documents, instruments, or things above referred to, and with any information that you possess in regard to the Plaintiff's demand, and your own defence thereto; so as to enable him to answer for you in all respects as you could do yourself if interrogated in person. And if you fail in any of these matters, and your Attorney or Vakeel is unable to answer any questions that may be put to him on your behalf by the Judge, and the Judge shall be of opinion that the documents, instruments, or things referred to, are such as you ought to have produced, or that the questions put to your Attorney or Vakeel are such as you ought to be able, or are likely to be able, to answer, if interrogated in person, the hearing of the case will be postponed, a notice will be given to your Attorney or Vakeel requiring your personal appearance, and the production of the documents, instruments, or things referred to, and you will have to pay all the costs; and if you should fail to appear in obedience to such notice, judgment will be given against you by default.

6. If you do not appear on the day fixed in the summons, either in person or by an Attorney or Vakeel of the Court, judgment will be given against you by default.

XVIII.

If the application be for a summons finally to dispose of the case, this further direction shall be endorsed thereon:— Further direction on summons for final disposal of the case.

7. You are required to take special notice, that the day fixed in the summons for your appearing, is appointed for the final disposal of the case, and that you must be prepared to produce all your witnesses. If you fail to do so, and the Judge shall think proper to postpone the cause to another day, in consequence of your default, you will have to pay all the costs that may be incurred by the postponement. If your witnesses will not come at your request, you should apply to the Officer of the Court, either in person or by Attorney or Vakeel, not later than the day of , for subpœnas to compel their attendance.

XIX.

Time for appearance on a summons to settle issues.

If the summons be to settle the issues, the day for the appearance of the Defendant shall not be less than ten days, exclusive of the day of service and day of appearance, above the time that may be necessary for the service of the writ, such time to be computed at the rate of one day for every eight miles in a straight line that the residence of the Defendant may be distant from the Court.

XX.

Time for appearance on a summons for final disposal of the case.

If the summons be for a final disposal of the case, the day to be fixed for the appearance of the Defendant shall not be less than fifteen days (exclusive as aforesaid) above the time that may be necessary for the service of the writ, such time to be computed in the manner above mentioned.

Service of Summons on the Defendant.

XXI.

Summons shall be served by the officer.

The writ of summons shall be delivered to the Bailiff or other proper officer of the Court, to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

XXII.

Latest day of service to be written at foot of the summons.

A day on or before which the summons must be served, shall be written at the foot of the summons before delivery to the officer, and the day so to be written shall be always such as to allow the Defendant the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXIII.

How service shall be made.

Service of the summons shall be made by exhibiting the original under the seal of the Court, and delivering or tendering a copy thereof and of the endorsements thereon, together with any notice to produce, and copies of any documents or instruments in writing that may have been delivered to the Clerk, or proper officer of the Court, at the time of applying for the summons, for the purpose of being served therewith.

XXIV.

When there are several defendants.

When there are several Defendants, service of the summons shall be made on each Defendant, unless all the Defendants are members of one joint and undivided Hindoo family; in which case service on any one of the Defendants shall be sufficient, if made at the family dwelling-house of the joint and undivided family.

XXV.

Service to be on defendant in person, or on his accredited agent.

Whenever it may be practicable, the service shall in all cases be on the Defendant in person, unless he have an accredited agent, empowered to accept the service; in which case service on such agent shall be sufficient.

XXVI.

Who may be an agent for this purpose.

Any Attorney or Vakeel of the Court, or any other person residing within its local jurisdiction, may be appointed an accredited agent to receive the services of summonses and all other judicial process. The appointment shall always be in writing, and shall be filed with the Clerk or other proper officer of the Court to which the agent is accredited, and shall be considered to be in full force until it shall be revoked, and such revocation be recorded with the proper officer of the Court.

XXVII.

Accredited agents of Government and *the East India Company.*

The Attorney to the East India Company shall be accounted the accredited Agent of the Government and of the East India Company for the purpose of receiving services of summonses, and all other judicial process against the Government or the East India Company that may be issued out of the High Court, and the Government Pleader in all other Courts shall in like

manner be accounted the accredited Agent of the Government for the purpose of receiving services of summonses and all other judicial process against the Government, issuing out of the Court in which he may be the Pleader of Government.

XXVIII.

When the Defendant cannot be found, and has no accredited agent empowered to accept the service, it may be made on any adult member of his family residing with him.

If defendant cannot be found, service may be made on a member of his family.

XXIX.

In all cases where the summons is served on the Defendant personally, or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service to be indorsed on the original summons.

The person served is to be required to indorse the summons.

XXX.

When the Defendant cannot be found, and there is no agent or other person empowered to accept the service, nor any member of his family on whom the same can be served, the serving officer shall fix the copy of the summons with its indorsement, and accompanying notice and copies of documents, if any be annexed thereto, on the outer door of the Defendant's dwelling-house; and if he shall have no dwelling-house in the place, the serving officer shall return the summons to the Court from whence it issued with an indorsement thereon that he has been unable to serve it.

If the summons cannot be served, it is to be returned with an indorsement of non-service.

XXXI.

The serving officer shall in all cases in which the summons has been served, endorse on the original summons the time and the manner when and how it was served.

If served, time and manner of service to be indorsed.

XXXII.

In all cases in which a summons shall be returned to the Court without having been served on the Defendant, the Plaintiff shall be at liberty to apply to the Court for an order to substitute some other mode of serving the summons for service in the manner above specified; and if it shall appear to the Court that there is reasonable ground for believing that the Defendant is keeping out of the way of its officer, for the purpose of avoiding the service of the summons, it shall pass an order directing that the summons may be served by fixing up copies thereof, with its endorsement and accompanying notice and copies of documents, if any be annexed thereto, upon some conspicuous place in the Court House, and also upon the door of the house in which the Defendant shall have last resided if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

If the summons be returned unserved, the Plaintiff may apply to the Court to substitute service.

XXXIII.

Whenever service shall be substituted by order of the Court, by virtue of the power contained in the last article, the time for the appearance of the Defendant shall be enlarged, so as to allow him the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

When service is substituted, the time for appearance is to be enlarged.

XXXIV.

If the Defendant be resident within the jurisdiction of any other Court than that in which the suit may be instituted, and has no accredited agent empowered to accept the service, the summons shall be transmitted by the Clerk or proper officer of the Court to the Clerk or proper officer of the Court within whose jurisdiction the Defendant may reside, with such enlargement of the time for appearance as the case may require. As the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the Bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be retransmitted to the Clerk or proper officer of the Court from whence it originally issued.

How the summons is to be served when the Defendant is out of the jurisdiction.

XXXV.

How it is to be served when he is out of the territories of the East India Company.

If the defendant be resident at some place out of the territories of the East India Company, and have no agent empowered to accept the service, and the suit be for landed or other real property, the summons may be served on any person in charge of the landed or other real property to which the suit may relate, and the service shall be as effectual for all purposes of the suit as if the person had been duly empowered to accept it. If there shall be no person in charge of the landed or other real property to which the suit relates, on whom the summons can be served, or if the suit shall not relate to landed or other real property, but the defendant is nevertheless subject to the jurisdiction of the Court by reason of the cause of action having arisen within the limits of its jurisdiction, a copy of the summons and of the endorsements thereon, together with any notice to produce, and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court, at the time of applying for the summons for the purpose of being served therewith, shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: Provided that in all cases in which a defendant is resident at some place out of the territories of the East India Company, the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is holden and the place where the defendant resides; and provided also, that if on the day fixed for the hearing of the cause, or on any other day subsequent thereto on which the cause may be called on, the defendant shall not appear in person, or by attorney or vakeel, the plaintiff shall apply to the judge, and it shall be lawful for the judge to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to such judge may seem meet; provided always, that the plaintiff shall prove his case to the satisfaction of the judge, and the making such proof shall be a condition precedent to his obtaining judgment.

XXXVI.

How native officers and soldiers are to be served.

When the defendant is a native officer or soldier in the service of the Government, a copy of the summons and of the indorsements thereon, together with any notice to produce and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court for the purpose of being served therewith, shall be transmitted by the Judge to the commanding officer of the corps to which the native officer or soldier shall belong, for the purpose of being served on such native officer or soldier. The commanding officer, after causing the summons and its accompanying notices and copies of documents to be served on the party to whom it is addressed, if practicable, shall return the summons to the Judge, with the written acknowledgment of the party indorsed thereon. If from any cause the summons cannot be served upon the native officer or soldier to whom it is addressed, it shall be returned by the commanding officer to the Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the summons to be duly communicated to the native officer or soldier, or shall adopt such other measures for that purpose as, on a consideration of the circumstances of each case, shall appear to be proper.

How privileged Persons are to be summoned.

XXXVII.

Substitutes for the summons in the case of privileged persons.

Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter Roobekaree, or other appropriate proceeding under the seal of the Court, when the person whose presence is required is of a rank or class in society which entitles him to such mark of consideration; and in such cases the letter or other proceeding shall be treated in all respects as a summons, and shall be accompanied with a copy of the directions which would ordinarily be indorsed on the summons, and with any notice and copies of any other documents which would have been delivered therewith, if a summons had been issued for the appearance of the party.

XXXVIII.

List of privileged persons to be kept by the officer of Court.

A list of the persons (if any) residing within the limits of the Court's jurisdiction, who are entitled to the mark of consideration mentioned in the last article, shall be kept in the office of the Clerk or other proper officer of the Court, and any application for a summons against a person whose name is entered in the said list, shall be referred by the officer to the Judge for his order before the summons shall be issued to the Defendant.

XXXIX.

Service how to be made on privileged persons.

When a letter or other proceeding is sent to a party on account of his being of a class or rank of society that entitles him to that distinction, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner that the Court may deem sufficient; unless the party shall have an accredited agent empowered to accept service of judicial process; in which case delivery to such agent shall be sufficient service. When the letter is transmitted through the post-office, or by special messenger, proof that it was duly posted, or was delivered to the messenger, shall be sufficient proof of its due service, in the absence of evidence to the contrary.

How Persons not before the Court may be made Parties to a Suit.

XL.

In certain cases of inheritance, a proclamation for claimants to be issued at the same time as the summons to the Defendant.

In every suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there may be more persons than one who by the Hindoo or Mahomedan law (regard being had to the religion of the claimants) would be entitled to a portion of the estate, there shall be issued, at the same time with the summons to the particular Defendant or Defendants, and in addition thereto, a proclamation setting forth the names of the parties, the nature of the suit, the day fixed for the hearing of the cause, and whether it have been fixed for the first hearing and settlement of issues, or for final disposal, and calling on all persons having any claim to any share or interest in the property, to appear on the said day, either in person or by an Attorney or Vakeel of the Court, and be prepared to state their claims to the Court, and to support them by proper evidence.

XLI.

Proclamation how to be published.

The proclamation shall be read aloud by the officer employed to serve the summons on some public place, within the limits of the zemindary, talook, land, or other real property concerning which the suit may be brought, and copies thereof shall be fixed up in some conspicuous part of the Court-house, and on the outer door of the family dwelling house of the person the right of succession or inheritance to whose property is in qnestion, or of the house in which he may have last resided. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

XLII.

Proclamation may be issued in any suit by order of the Court.

If in any suit it shall appear to the Court at any hearing of the cause, that all the persons who may be entitled to some share or interest in the property in dispute have not been made parties to the suit, it shall be competent to the Court to adjourn the hearing of the cause to a future day to be fixed, and to direct a proclamation to be issued calling upon all persons having any claim to any share or interest in the property to appear on the day so to be fixed, and be prepared to state their claims to the Court, and to support them by proper evidence. If the suit shall relate to the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the proclamation shall be published or made known in the manner prescribed in the last preceding article. If the suit shall relate to any other matter or thing,

a copy of the proclamation shall be fixed up in some conspicuous part of the Court house, and it shall also be competent to the judge to direct that the proclamation shall be published or made known in such other manner as he may think proper. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall in all cases be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular judge in whose Court the suit may be brought.

XLIII.

If any claimant appear he is to be treated as a party to the suit.

If any claimant shall appear on the day fixed in any proclamation issued under the provisions of Article XL. or of Article XLII., the Court shall investigate his claim and pronounce a decision thereon, in the same way as if he had been made originally a party to the suit.

Of Suits against the Government and its Officers, and the East India Company.

XLIV.

If the suit be against the Government or its officers, the application for a summons is to be referred to the Judge.

If the suit be against the Government, or against any of its officers for acts which the Plaintiff at the time of applying for the summons alleges to have been done in an official capacity, the application for the summons shall be referred by the officer to the Judge for his order before any summons shall be issued to the Defendant.

XLV.

In cases where the Civil Courts have no direct jurisdiction against the officers of Government, the Applicant is to be referred to the Government.

If it shall appear to the Judge, after examining the applicant, that the act complained of was done pursuant to a special order originating with the Government, or with the Board of Revenue, and that the officer by whom the act was done is not liable to be sued for it, the Judge shall direct the person who may have made the application for the summons to apply in the first place to the Government by petition, stating wherein he considers himself injured under the Regulations of the Madras [*Bombay*] code, or the Acts of the Council of India, and praying that the Government will order the Court of Civil Judicature in which the cause may be cognizable, to try the contested points or matters by the Regulations or Acts. If the Government shall deem proper to grant the prayer of such petition, and the plaintiff shall file an order to the above effect with the clerk or proper officer of the Court; or if a plaintiff shall in the first instance, with his application for a summons in a case of the aforesaid description, produce an order from the Government to the effect aforesaid, and it shall appear to the Judge that the case is within his jurisdiction and cognizable under the order, he shall direct the summons to be issued to the officer by whom the act complained of may have been done, in the same way as is herein-before prescribed for the issuing of summonses to private individuals; and in no case shall a summons be issued to any defendant in a case of the nature aforesaid without an order to the effect aforesaid.

XLVI.

In cases where the Civil Courts have direct jurisdiction against the officers of the Government, the Judge is to refer to the Board of Revenue.

If it shall appear that the act complained of was done without any order of the Government, or of the Board of Revenue, and that the act complained of is one for which the officer by whom it was done is declared amenable under the Regulations of the Madras [*Bombay*] code or the Acts of the Council of India, the Judge shall transmit the particulars of the claim as set forth in the Register referred to in Article XIII., to the Board of Revenue, together with copies of any documents or instruments in writing that may have been delivered to the clerk or proper officer of the Court at the time of applying for the summons, for the purpose of being served therewith.

XLVII.

How the Board of Revenue is to proceed in cases referred to it.

The Board of Revenue, after making due inquiries on the subject, shall determine whether the party complaining is entitled to redress directly from Government, or whether he shall be left to prosecute the case in the regular course of law; and if they shall be of opinion that the party should be left to

prosecute the case in the regular course of law, they shall inform the Judge by whom the case may have been referred to them of their determination to that effect, and also whether the case is to be defended by the public officer as a suit against the Government, or by the person affected by the complaint in his individual capacity.

XLVIII.

When the Summons is to be issued.

At the expiration of days from the transmission, or at any earlier period when the Judge may receive intimation from the Board of Revenue that it has been decided that the party complaining shall be left to prosecute his case in the regular course of law, the Judge shall direct a summons to be issued to the officer whose act has been complained of, in the same manner as is herein-before prescribed for the issuing of summonses to private individuals.

XLIX.

Suits against the East India Company.

If the suit be against the East India Company, the summons shall be served on their attorney at Madras [*Bombay*], who shall appear for the said Company on the day therein mentioned, to answer on their behalf to the suit of the plaintiff. And if the said attorney shall appear on the day mentioned in the summons, and answer to the suit of the plaintiff, or if he shall not appear on the said day, or on any subsequent day on which his appearance may be required during the progress of the suit, or if he shall so appear, but shall refuse or be unable to answer any question that may be put to him by the Court relative to the suit, the procedure shall be the same in all respects as is herein-after provided for suits against individual parties, or as near thereto as the circumstances of the case will admit.

Of Arrest before Judgment.

L.

When Defendant is about to leave the jurisdiction Plaintiff may apply that security be taken for his appearance.

If in any suit the Defendant, with intent to avoid or delay the Plaintiff, is about to leave the jurisdiction, the Plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court to demand that security be taken for the appearance of the Defendant, to answer any judgment that may be passed against him in the suit.

LI.

How the Court is to proceed on such application.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the Defendant is about to leave its jurisdiction, with the intent of avoiding or delaying the Plaintiff, it shall issue a warrant to the proper officer, enjoining him to bring the Defendant before the Court, that he may give good and sufficient bail for his appearance at any time when called upon while the suit is pending, and until execution of any decree that may be passed against him in the suit; the surety or sureties undertaking, in default of such appearance, to pay, to an extent to be fixed by the Judge and specified in the warrant, any sum of money that may be adjudged against him in the suit, with costs.

LII.

Sureties may apply to be relieved from their engagements.

The sureties for the personal appearance of the Defendant may at any time apply to the Court to be relieved from their engagements as sureties, whereupon the Court shall issue its warrant directing that the Defendant be brought before it. On the appearance of the Defendant to such warrant, or on his voluntary surrender, the Judge shall direct the engagement of the sureties to be cancelled, and shall call upon the Defendant to give fresh security, and in default thereof shall commit him to custody.

LIII.

Deposit in lieu of bail.

Should a Defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit, and forthwith discharge the Defendant.

LIV.

Defendant to be committed to custody if he cannot give security.

In the event of the Defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decree shall have been passed.

LV.

When the Defendant is about to leave the country the application to be made to the High Court.

If in any suit the Defendant is about to leave the jurisdiction of the High Court with intent to remain absent so long that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant, the Plaintiff may make an application to the High Court, or to any Judge or Judges thereof, to the effect and in the manner aforesaid, and the procedure shall be in all respects the same as herein-before provided, except that the security for the appearance of the Defendant shall be for his appearance in the Court, whatever it may be, in which the suit is pending.

Of Sequestration before Judgment.

LVI.

In certain cases Plaintiff may apply for a sequestration of Defendant's property.

If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, it shall be lawful for the Court, on the application of the plaintiff in manner aforesaid, either at the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, when required; and on his failing to give such security, to direct that any property real or personal belonging to the defendant, or any debts due to him, or any money standing in his name or to his account and in deposit in any court of justice, or any office of Government, or at his credit in any bank, or any interest or dividends payable or thereafter to become payable on any Government paper or shares in the capital or joint stock of any banking, railway, or other public company or corporation, standing in his name, or such a portion of such property, debts, or money as may be sufficient to fulfil the decree, shall be attached, and held in sequestration until the further order of the Court.

LVII.

Application, how to be made.

The application shall be accompanied with the following particulars distinctly written in the language in use in proceedings before the Court, viz. the nature and amount of the claim, the property required to be sequestrated, and the supposed value of each article or item thereof; and the Plaintiff shall, at the time of making the application, declare that the claim is a just one, and that the Defendant is about to dispose of or remove his property in manner aforesaid.

LVIII.

Defendant may be called on for security.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the Defendant intends to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, and if the Plaintiff shall in person or by his agent enter into a bond rendering himself liable in such sum as may be judged adequate for all injury arising from the sequestration, in the event of his demand being disallowed, either wholly or in part, the Court shall thereupon issue a warrant to the proper officer commanding him to require security from the Defendant, in such sum as may be specified in the order, to produce and place at the Court's disposal, when required, the said property, or a portion thereof sufficient to fulfil the decree.

LIX.

If security is not provided property may be sequestrated.

If such security is not furnished within the time specified in the order, the Court shall direct that the property, debts, or money mentioned in the particulars which accompanied the plaintiff's application, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached, and kept under sequestration until further order.

LX.

The process for requiring security and for attachment and sequestration, when the property shall consist of goods and chattels, or other personal estate and effects, may be issued successively or simultaneously, as the Court shall think proper.

Process for taking security and for sequestration may be simultaneous.

LXI.

The attachment and sequestration shall be made, according to the respective natures of the property to be attached and sequestrated, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money.

How the sequestration is to be made.

LXII.

In all cases of sequestration before judgment, the Court which passed the order for the sequestration shall at any time remove the same, on the Defendant's furnishing security as above required, together with security for the costs of the sequestration.

Sequestration may be removed when security is furnished.

LXIII.

If, on the trial of the suit, it shall be discovered that the sequestration was applied for on insufficient grounds, or if the Plaintiff's claim is disallowed, either wholly or in part, the Court shall (unless the Defendant shall in preference seek redress by a civil action for damages) award against the Plaintiff in its decree the whole of the amount specified in his penalty bond, or such part thereof as it may deem a reasonable compensation to the Defendant for the expense or injury occasioned to him by the Plaintiff.

Compensation for needless sequestration.

LXIV.

Sequestrations before judgment shall not bar any person holding a decree against the Defendant from attaching the property under sequestration, or affect the rights of persons not parties to the suit.

Sequestration not to bar the execution of decrees or injure third parties.

LXV.

But if the party at whose instance the property was sequestrated points out other property of the Defendant unattached, the creditor shall be bound in the first instance to attach and sell such property in execution of his decree, before selling the property under sequestration.

But person holding the decree is first to attach any other property of the Defendant that may be pointed out.

LXVI.

Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue, due previously to the sale, (and with or without security at the discretion of the Court,) be put in immediate possession of the lands, and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of 1 per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.

Special case in which Plaintiff may be put in immediate possession of land the subject of suit.

Of Injunctions.

LXVII.

In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the cause is in danger of being wasted or damaged by any party to the suit, it shall be lawful to the Court to issue its injunction to such party, commanding him to refrain from doing the particular act or acts complained of, or to give such other orders for the purpose of staying and preventing him from wasting or damaging the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a cause, it shall be lawful to the Court to appoint a receiver or manager of such property, and if need be to remove the person or persons in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such

Cases in which an injunction to stay waste may be granted;

or in which a receiver or manager may be appointed.

receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper.

LXVIII.

Special rule in actions for injunctions.

In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff at any time after the commencement of the suit, and whether before or after judgment, to apply *ex parte* to the Court for an injunction to restrain the defendant from the repetition, or the continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted or denied by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be inforced by imprisonment in the same manner as a decree for specific performance: provided always, that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Of Withdrawing Suits.

LXIX.

How the Plaintiff may withdraw from a suit

If the Plaintiff be desirous of withdrawing from the cause, he may give notice thereof to the Clerk or proper officer in person, or by his Attorney or Vakeel, and to the Defendant by pre-paid post letter; after the receipt of which by the Defendant he shall not be entitled to any further costs than those incurred up to its receipt, unless the Judge shall otherwise order; and proof that the letter was duly posted shall be sufficient proof of the receipt thereof by the defendant, in the absence of evidence to the contrary.

LXX.

Effects of withdrawal.

If the notice be given to the officer at any time before the day mentioned in the summons, the Plaintiff shall be at liberty to bring a fresh suit for the same matter, unless precluded by the rules for the limitation of actions. If the notice be given on or subsequent to the day mentioned in the summons, the Plaintiff shall be precluded from bringing a fresh suit for the same matter, unless he shall have previously obtained the consent of the Defendant, or the permission of the Judge to withdraw the suit. It shall be competent to the Judge at any time before final judgment to grant such permission on what may appear to him sufficient grounds for so doing, and on such terms as to costs or otherwise as he may deem proper.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

LXXI.

Suit not to abate by death.

The death of a plaintiff or defendant shall not cause the suit to abate. A note of the death shall be entered on the register of the suit, and the suit may be continued as herein-after mentioned.

LXXII.

Proceedings in case of death of one or more of several plaintiffs or defendants.

If there be two or more plaintiffs or defendants, and one or more of them should die, and if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

LXXIII.

Proceeding in case of death of one or more of several plaintiffs,

If there be two or more plaintiffs, and one or more of them should die, and if the cause of action shall not survive, to the surviving plaintiff or plaintiffs alone, but shall accrue to them and the legal representative

or representatives of the deceased plaintiff or plaintiffs, the Court may, on the application of the legal representative or representatives of the deceased plaintiff or plaintiffs, enter the name or names of such representative or representatives in the register of the suit in the place or stead of such deceased plaintiff or plaintiffs, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such legal representative or representatives of the deceased plaintiff or plaintiffs; and if the application be made before the trial, and there be any dispute as to the fact of the person or persons so applying being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons making such application, as if such person or persons were originally a plaintiff or plaintiffs. If no application shall be made to the Court by any person or persons claiming to be the legal representative or representatives of the deceased plaintiff or plaintiffs, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of the deceased plaintiff or plaintiffs to appear on a day to be fixed in such proclamation, and to proceed with the suit in his or their stead. If any person or persons shall appear on the day mentioned in the proclamation to proceed with the suit as the legal representative or representatives of the deceased plaintiff or plaintiffs, his or their name or names shall be entered in the register of the suit, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such person or persons so appearing as the legal representative or representatives of the deceased plaintiff or plaintiffs; and if the appearance be made before the trial, and there be any dispute as to the fact of the person or persons so appearing being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons so appearing, as if such person or persons were originally a plaintiff or plaintiffs. And if no person shall appear on the day to be fixed in the said proclamation, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and if judgment be given in favour of the defendant, the legal representative or representatives of the deceased plaintiff or plaintiffs shall be bound thereby equally with the surviving plaintiff or plaintiffs; but if judgment be given against the defendant or defendants, it shall only be to the extent of the share or shares of the surviving plaintiff or plaintiffs, and with a reservation of the rights of the legal representative or representatives of the deceased plaintiff or plaintiffs.

Where the right of action accrues to the survivor and the representative of the deceased.

LXXIV.

In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative or representatives of such plaintiff, enter the name of such representative or representatives in the place or stead of such plaintiff in the register of the suit, and the suit shall thereupon proceed; and if such application be made before the trial, and the fact be disputed, the truth thereof shall be tried thereat with the title of the deceased plaintiff, and judgment shall be given in favour of or against the person or persons making the application, as if such person or persons were originally the plaintiff or plaintiffs. If no application shall be made to the Court within what it may consider a reasonable time by any person or persons claiming to be the legal representative or representatives of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate or estates of the deceased sole plaintiff or surviving plaintiff, or if the Judge shall think proper he may, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative or representatives of the deceased sole plaintiff or surviving plaintiff, and prosecuting the suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

Proceeding in case of death of sole or sole surviving plaintiff.

LXXV.

Proceeding in case of death of one or more of several defendants, or of a sole or sole surviving defendant.

If there be two or more defendants, and one or more of them should die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the clerk or other proper officer of the Court, with the following particulars distinctly written in the language in ordinary use in judicial proceedings before the Court, viz., the name, description, and place of abode of any person or persons whom he alleges to be the legal representative or representatives of such defendant or defendants, and whom he desires to be made the defendant or defendants in his or their stead, and the clerk or other proper officer of the Court shall thereupon enter the name of such representative or representatives in the register of the suit in the place or stead of such defendant or defendants, and shall issue a summons to him or them to appear on a day to be therein mentioned to defend the suit. If no application shall be made to the Court, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of such defendant or defendants to appear on a day to be fixed in such proclamation, and defend the suit. If any person or persons shall appear on the day mentioned in the proclamation, to make defence to the suit, as the legal representative or representatives of the deceased, his or their name or names shall be entered in the register of the suit, in the stead of the deceased defendant or defendants, and the suit shall proceed in the same way as if such person or persons had been originally a defendant or defendants thereto. And if no person shall appear on the day to be fixed in the said proclamation, the Court may proceed to dispose of the cause in the manner provided in Article LXXXI., or may make such order as may appear to be just and proper in the circumstances of the case.

LXXVI.

Objections which are competent to the new defendant.

In all cases in which the legal representative or representatives of a deceased defendant or defendants shall be entered in the register, in the stead of such deceased defendant or defendants, if the issues shall not have been settled before the death, the new defendant or defendants shall be entitled to make all objections which would have been competent to the deceased defendant or defendants, and in addition thereto may make such other objections to the suit as may be appropriate to and rendered necessary by his or their character of legal representative; but if the issues shall have been settled before the death, the new defendant or defendants shall be at liberty to object only by way of denial, or to make such other objection only as may be appropriate to and rendered necessary by his or their character of legal representative, unless by the leave of the judge he or they shall be permitted to object fresh matters; and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sums sought to be recovered, and in respect of the costs prior to the entry of the name of the new defendant or defendants, as he would have been entitled to against the original defendant or defendants, and in respect of the costs subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the legal representative.

LXXVII.

Marriage of a female plaintiff or defendant not to abate the suit.

The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued, upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree; and if in any such suit the wife shall sue or defend by attorney or vakeel appointed by her when sole, such attorney or vakeel shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney or vakeel changed by authority of the Court.

LXXVIII.

The bankruptcy or insolvency of the plaintiff in any suit which the assignees might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignees shall decline to continue the suit, and give security for the costs thereof, within such reasonable time as the judge may order; but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the suit, and to give such security, within the time limited by the order, the defendant may, within eight days after such neglect or refusal, object bankruptcy or insolvency as a reason for abating the suit.

Bankruptcy or insolvency when not to abate the suit.

Of Notices to produce, and how they are to be served.

LXXIX.

Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he supposes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the cause, he shall at the earliest opportunity deliver to the Clerk or proper officer of the Court two notices in writing to the party in whose possession or power he supposes the document, writing, or other thing, to be, calling upon him to produce the document, writing, or other thing, on the day on which he wishes the same to be produced; and one of such notices shall be retained by the officer, and the other shall be delivered by him to the bailiff or proper officer, to be served in the manner herein-after mentioned:

Two notices in writing to be delivered to the proper officer of the Court.

1. If the party on whom the notice is to be served shall have employed an Attorney or Vakeel to act for him in the cause, the notice shall be served on such Attorney or Vakeel by delivering the notice to him personally, or by leaving it at his office, or ordinary place of residence.

How the notice is to be served.

2. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall have his place of abode within a radius of eight miles from the Court House, the notice shall be served on him by delivering it to him personally, or leaving it at his place of abode.
3. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall not have his place of abode within a radius of eight miles from the Court House, but shall have entered in the book, to be kept for that purpose by the proper officer, the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall be served by delivering the same to such person, or by leaving it at his place of abode.
4. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall neither have his own place of abode within a radius of eight miles from the Court House, nor shall have entered in the book to be kept for that purpose the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall in like manner be served by delivering the same to the party in person or by leaving it at his place of abode; unless the notice be for some day subsequent to the first hearing of the cause, in which case it shall be sufficient service of the notice if it be fixed up in some conspicuous place in the office of the Clerk or proper officer of the Court, and also in some conspicuous place of the Court House.

Of the Appearance of the Parties, and Judgment by Default for Non-appearance.

LXXX.

On the day in that behalf mentioned in the summons, and from day to day, if necessary, until the cause is called on, the parties shall be in attendance at the Court-house in person or by an Attorney or Vakeel of the

Parties must appear in person or by attorney.

Court duly empowered to represent them in all matters relating to the prosecution or defence of the action, as the case may be.

LXXXI.

Consequences of non-appearance of a sole Plaintiff or Defendant.

If, on the day fixed for the hearing of the cause, or any other day subsequent thereto, on which the cause may be called on, neither party appears, either in person or by an Attorney or Vakeel of the Court, when duly called upon by the proper officer of the Court, the cause shall be struck out, with liberty to the Plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions. If the Plaintiff shall appear in person or by Attorney or Vakeel and the Defendant shall not appear in person or by Attorney or Vakeel, and it shall be proved to the satisfaction of the Judge that the summons was duly served, or if the Defendant having appeared in person or by Attorney or Vakeel shall refuse to answer to the claim of the Plaintiff, then and in any of these cases the Judge shall pass judgment against him by default. And in like manner if the Defendant shall appear in person or by Attorney or Vakeel, and the Plaintiff shall not appear in person or by Attorney or Vakeel, or having appeared shall refuse to state his claim or to answer any questions respecting the same that the Judge may think proper to put to him, then and in any of these cases the Judge shall pass judgment against the Plaintiff by default.

LXXXII.

When there are several plaintiffs or defendants each may authorize the other to appear for him.

When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed with the proper officer of the Court; when so filed it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act were a vakeel of the Court.

LXXXIII.

When such appearance may be made without special authority.

Nothing in the preceding Article contained shall be taken to prevent any one of two or more plaintiffs or defendants from appearing for the other or others of them respectively, without any special authority, when already entitled by law so to do by reason of unity of interest in the matter in dispute, or otherwise howsoever.

LXXXIV.

Consequence of non-appearance of one or more of several plaintiffs.

If there are two or more plaintiffs, and one or more of them shall appear in person, or by attorney or vakeel, or by a co-plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, it shall be competent to the judge to proceed with the suit at the instance of the other plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if

Consequence of non-appearance of one or more of several defendants.

there are two or more defendants, and one or more of them shall appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and if the plaintiff or plaintiffs shall consent to abandon the suit against the defendant or defendants who shall have appeared, and if judgment by default can be given against the defendant or defendants who shall not have appeared without detriment to the rights or interests of the other defendant or defendants, judgment may be given by default against the defendant or defendants who shall have so failed to appear, upon such terms as to the costs of the other defendant or defendants, or otherwise, as to the judge may seem proper; but if the plaintiff or plaintiffs shall not agree to abandon the suit against the defendant or defendants who shall have appeared, or if judgment cannot be given by default against the defendant or defendants who shall not have appeared, without detriment to the rights or interests of the defendant or defendants who shall have appeared, the judge

shall proceed with the cause to judgment, and shall at the time of passing his judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

LXXXV.

When and how judgment by default may be set aside.

In all cases of judgment against a Defendant by default, for non-appearance, he may apply, at any time before the same shall have been finally executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Judge that the summons was not duly served, or that the Defendant was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the cause. And in like manner in all cases of judgment against a Plaintiff by default for non-appearance, he may apply, within a reasonable time, for an order to set aside the judgment; and if it shall be proved to the satisfaction of the Judge that the Plaintiff was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the cause. In all cases whatsoever of judgment by default, in which a Judge shall pass an order for setting aside the judgment, his order shall be final; but in all cases in which he shall reject an application to set aside a judgment by default, an appeal shall lie from his order refusing the application, to the tribunal to which his final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

LXXXVI.

When the Defendant has not been summoned in sufficient time, the Plaintiff may apply for a new summons or bring fresh suit.

If it shall not be proved to the satisfaction of the Judge that the summons was duly served on the Defendant in sufficient time to enable him to appear in person or by Attorney or Vakeel on the day fixed for the hearing of the cause, the Judge shall, at the option of the Plaintiff, either postpone the cause to a future day, and grant him a second summons to the Defendant, to be served in like manner as aforesaid, in continuation of the existing suit, or permit him to withdraw his suit, and if he shall elect to withdraw his suit, he shall be at liberty to institute a fresh suit for the same matter against the Defendant in the same Court, or in any other Court of competent jurisdiction, at any time, unless precluded by the rules for the limitation of actions.

Of the Examination of the Parties.

LXXXVII.

Examination of the parties or their attorneys.

In all suits in which both the parties appear in person or by Attorney or Vakeel before the Judge, they or their Attorneys or Vakeels may be examined orally by the Judge, and it shall be incumbent on them respectively to answer such questions in regard to the suit as he may think proper to put to them.

LXXXVIII.

Consequence of refusal or inability of attorney to answer.

If any of the parties shall appear by an Attorney or Vakeel of the Court, and such Attorney or Vakeel shall refuse, or be unable to answer any material question relating to the case, which the Judge is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Judge shall postpone the hearing of the cause to a future day, and direct that the party whose Attorney or Vakeel may have refused, or been unable to answer as aforesaid, shall attend in person on such day, and shall pay the costs of the opposite party;—and if the party so directed to attend shall fail to appear in person on the day to be so appointed, the Judge may pass judgment against him, as in case of default, or give such other order in relation to the cause as he may deem proper in the circumstances of the case.

Of the Production of Documents.

LXXXIX.

Documentary evidence to be produced at first hearing.

The parties, or their attornies or vakeels, shall bring with them, and have in readiness at the first hearing of the cause, to be produced when called upon by the Court, all their documentary evidence of every description, and all documents, writings, or other things which may have been specified in any notice to produce which may have been served on them respectively within a reasonable time before the hearing of the cause; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the nonproduction of the document at the first hearing.

XC.

Exhibits may be admitted or rejected by the Court.

All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible.

XCI.

Unstamped documents may be received on payment of duty and penalty.

If the exhibit be a deed, instrument, or writing, chargeable with stamp-duty under the existing Regulations of the Madras [*Bombay*] Code, or Acts of the Council of India, it shall not be received in evidence if unstamped or not sufficiently stamped, until the whole or the deficiency (as the case may be) of the stamp duty and the penalty required by the existing Regulations of the Madras [*Bombay*] Code or Acts of the Council of India shall have been paid to the clerk or proper officer of the Court.

XCII.

Duty and penalty to be received by officer of Court.

Such officer shall, upon payment to him of the whole, or of the deficiency (as the case may be) of the stamp duty payable upon or in respect of such document, and of the penalty required by the Regulations of the Madras [*Bombay*] Code or Acts of the Council of India, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty; and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall at the end of every month duly make a return to the collector of revenue of the Zillah of the monies (if any) which he has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the cause and the names of the parties from whom he received such monies, and the date, if any, and description of the document, for the purpose of identifying the same; and he shall pay over the said monies to the collector of revenue, or to such person as he may appoint or authorize to receive the same; and the collector of revenue, or other proper authority, shall, upon production of the receipt herein-before mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid.

XCIII.

How admitted exhibits are to be marked.

When an exhibit is received by the Court, and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record.

XCIV.

Rejected exhibits to be marked and returned.

When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in the last preceding article, with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons, to reclaim it; and in all cases in which a rejected exhibit is returned a certified copy of the exhibit and the endorsement shall be kept by the Court.

XCV.

When exhibit admitted in evidence may be returned.

When the time for appealing has elapsed, or in case the suit has been appealed, then after the appeal has been finally disposed of, either party shall be entitled, on application to the Court in which the exhibit may be, to receive back any document produced by him in the suit, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice, as on suspicion of forgery.

XCVI.

May be returned sooner, for special reasons.

Any exhibit may be returned before the time mentioned in the last preceding Article, if the Judge of the Court in which the document may happen to be shall think proper, for special reasons, to order its return.

XCVII.

Certified copy of returned exhibits to be kept.

In all cases in which a document once received by a Court of Justice and admitted in evidence is restored, a copy, properly certified, shall be substituted for it in the record of the suit, and a receipt shall be given by the party receiving it in a separate receipt book kept for the purpose.

XCVIII.

Court may send for papers from its own records or from other public offices or Courts.

Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own records or from any other public office or Court, the record of any other suit or case, and inspect the same, when the inspection of such record or any part of it shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Of the Settlement of Issues.

XCIX.

Framing of issues.

If in the course of the oral examination of the parties or their Attorneys or Vakeels it shall appear that they are not at issue upon any question of law or fact, the Court may at once give judgment; and if it shall appear that they are at issue on some question of law or fact, the Judge after he shall have satisfied himself by such oral examination of the parties or their Attorneys or Vakeels, on what questions of law or fact they are really at issue, will proceed to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend.

C.

Written statements may be tendered by the parties to assist the judge at the first hearing of the cause.

For the purpose of assisting the Judge in framing the issues, the parties or their Attorneys or Vakeels may tender at the first hearing of the cause written statements of their respective cases, which statements the Judge shall receive and peruse, and put on the record; but he may, nevertheless, frame the issues from the allegations of fact which he collects from the oral examinations, notwithstanding any difference between such allegations of fact, and the allegations of fact contained in the written statements so tendered by the parties or their Attorneys or Vakeels.

CI.

No statement to be taken thereafter unless called for by the Judge.

No such written statement shall be received after the first hearing of the cause, unless called for by the Judge under the power herein-after contained.

CII.

Judge may at any time call for a written statement.

It shall be competent to the Judge, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties, for the purpose of assisting him to frame or amend the issues.

CIII.

How written statements are to be framed.

Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narra-

tive of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

CIV.

Judge may reject an improper statement,

If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Judge may reject the same; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for by the Court. If the Judge think proper, he may, instead of absolutely rejecting the written statement, receive and record the same, after he shall have struck out all such parts of the written statement as he may consider to be argumentative, unnecessary, or irrelevant; and such parts of any written statement as may be so struck out by the Judge shall be disallowed upon any taxation of costs as between party and party. It shall also be competent to the Judge to impose upon the party from whose written statement he shall see fit to strike out any part, as being argumentative, unnecessary, or irrelevant, a fine not exceeding fifty rupees.

or expunge irrelevant matter,

and fine party presenting it.

CV.

Judge may call for a person whom he thinks it proper to examine before framing the issues.

If the Judge shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, he may adjourn the framing of the issues to a future day, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by subpœna or other suitable process.

CVI.

Amendment of issues.

At any time before the decision of the case, the Judge may amend the issues on such terms as to him shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

CVII.

Appeal.

If either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground after the decision of the case.

Of Issues by Agreement of Parties.

CVIII.

Questions of fact, or of law or equity may be stated by the parties in the form of an issue. and an agreement may be entered into for the payment of a sum of money, or the doing or the refraining to do a particular act, according to the result of the issue.

When the parties to a suit are agreed as to the question or questions of fact, or of law or equity, to be decided between them, they may, at any time after the issue of the summons, state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Judge in the affirmative or the negative of such issue a sum of money fixed by the parties, or to be ascertained by the Judge upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts, specified in the agreement, and having reference to the matter in dispute, either with or without the costs of the suit.

CIX.

The judge, if satisfied that the agreement was executed *bonâ fide* may decree accordingly.

If the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried or decided, he may proceed to record and try the same, and

deliver his finding or opinion thereon in the same manner as if the issue had been framed by himself in an ordinary suit, and may upon his finding or deciding in such issue, give judgment for the sum so fixed by the parties or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

When the Suit may be disposed of at the First Hearing.

CX.

If the summons was for a final disposal of the case, or the parties consent, suit may be decided at first hearing;

If the Court shall be satisfied that the questions of law or fact on which the parties are at issue do not require any further argument or proof than such as the parties or their Attorneys or Vakeels can at once supply, the Court may at once decide such question, if the summons have been issued for a final disposal of the cause; and if the summons have been issued for a settlement of issues only, the Court may in like manner at once decide the question, if the parties consent thereto.

CXI.

otherwise, the hearing of the case to be postponed.

When the summons has been issued for the settlement of issues only, if the parties or either of them do not consent that the Court shall at once decide the questions of law or fact on which they may be at issue, or if the questions of law or fact on which they are at issue require further argument or proof than the parties or their Attorneys or Vakeels can at once supply, the Judge shall postpone the further hearing of the cause, and shall fix a day for the production of further evidence, or for further argument, as the case may require.

Of Adjournments.

CXII.

Judge may grant time, or adjourn to a future day.

The Judge may, at any stage of the suit, grant time to the parties, or either of them, and may from time to time adjourn the hearing of the cause as he may think fit; and in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Judge shall otherwise direct.

CXIII.

How the Judge is to proceed if the parties fail to appear on the day fixed.

If on any day to which the hearing of the cause may be adjourned, the parties or either of them shall not appear in person or by Attorney, or Vakeel, the Court may proceed to dispose of the cause in the manner specified in Article LXXXI. or Article LXXXIV., as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

Of Summoning Witnesses.

CXIV.

Application for Summons.

The parties or their Attorneys or Vakeels may at any time obtain, on application to the Clerk or other proper officer of Court, summonses to witnesses or other persons, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted.

CXV.

Expenses of witnesses to be paid before issue of summons.

The person applying for a summons shall pay to the Clerk or proper officer of the Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to

the rules, if any, established by the Court to which such Court shall be immediately subordinate. The sum so paid to the officer shall be tendered to the witness or other person, at the time of serving the summons, if it can be served personally. In addition to the sum so paid, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness or other person summoned shall not be bound to give evidence, or produce any document until such sum shall be paid.

CXVI.

Time and place of attendance to be specified in summons.

Every summons for the attendance of any witness or other person, shall specify the time and place at which he is required to attend, and also the purpose for which his attendance is required; and any particular document or documents which the witness or other person may be called on to produce shall be described in the summons with convenient certainty. The witness shall further be required to produce all deeds and documents in his possession relating to the subject of the suit, and shall be bound to produce them unless he shall satisfy the Judge that the notice to produce did not give him sufficient information.

CXVII.

Summons to produce a document or to assist in framing issues.

Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Service of Summons on a Witness.

CXVIII.

How the summons shall be served.

Every summons shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

CXIX.

Service to be on the witness, or a member of his family.

Whenever it may be practicable, the service of the summons shall in all cases be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult member of his family residing with him.

CXX.

When the summons cannot be served it is to be returned to the Court.

When the person required to attend cannot be found, and there is no adult member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

CXXI.

Time and manner of service to be endorsed on the summons.

The serving officer shall in all cases in which the summons has been served endorse on the original summons the time and the manner where and how it was served.

CXXII.

How a summons on a witness who resides in another jurisdiction is to be served.

If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the clerk or proper officer of the Court in which the suit is pending, to the clerk or proper officer of the Court within whose jurisdiction the person required to attend may reside; and the clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the bailiff or other proper officer of his own Court, to be served in the manner above

directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

CXXIII.

When a witness absconds his property may be attached.

If any person for whose attendance, either to give evidence or to produce a document, a summons shall be issued, cannot be served in either of the ways herein-before specified, the Court on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness absconds or keeps out of the way, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon or near to his house or place of abode; and if such person shall not attend at the time and place to be named in such proclamation, his property (real and personal), to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment, as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale.

CXXIV.

How the Court is to proceed with the witness on his appearance.

The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property if the witness shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not such a notice of the proclamation as aforesaid, it shall be in the discretion of the Court to order the property attached, or any part thereof, to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such default, or absconding or keeping out of the way, and any fine which the Court may deem fit to impose upon the witness under the provisions of Article CCIX., or the Court may order the property to be released from the attachment upon payment of such costs and fine as aforesaid.

Of the Examination of Parties as Witnesses.

CXXV.

Parties may be examined.

When a party to a suit appears in person at any hearing of the cause, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

CXXVI.

Special application to be made for the examination of a party as a witness.

If any party to the suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his Attorney or Vakeel, make a special application to the Court for an order that the party do attend, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

CXXVII.

The Court may first issue a notice to show cause.

The Court, if it think fit so to do, may, before making such order, cause notice to be given to the party or his Attorney or Vakeel, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such application.

CXXVIII.

May receive a written declaration in support of the cause shown.

In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and delivered into the Court by himself or his Attorney or Vakeel.

CXXIX.

If no sufficient cause be shown, summons to issue

If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Attendance of Witnesses, and Consequence of Non-attendance.

CXXX.

Persons summoned to give evidence must attend.

Any person who shall be summoned to appear and give evidence in a cause shall be bound to attend at the time and place named for that purpose.

CXXXI.

Consequences of non-attendance by a witness not a party to the suit.

If any witness, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Article CXIX., shall, without lawful excuse, fail to comply with such summons, the Court may issue an order to the bailiff or other proper officer to apprehend and bring the witness before the Court. If any such person abscond or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided in Article CXXIII. with respect to a witness on whom the service of a summons cannot be effected.

CXXXII.

Consequences of refusal to give evidence.

If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition as herein-after required, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to sign his deposition, or to produce the document; after which, in the event of his persisting in his refusal, the Court may proceed to deal with him according to the provisions of Article CCIX.

CXXXIII.

Consequence of non-attendance or refusal of a party.

If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, as in case of default, or give such other order in relation to the cause as the Court may deem proper in the circumstances of the case.

CXXXIV.

Any person present in Court may be called upon to give evidence though not summoned.

Any person present in Court, whether a party or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be examined.

CXXXV.

Witnesses must be examined at the hearing of the cause in open Court in the presence of the Judge.

On the day appointed for the hearing or trial of the cause, or on some other day to which the hearing or trial may be adjourned, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal may lie to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, by or in

the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit, or their Attorneys or Vakeels. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his Attorney or Vakeel shall require it. If any question put to a witness be objected to by either of the parties, or their Attorneys or Vakeels, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of the witness while under examination. In cases where an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge shall make a short memorandum of the substance of what each witness may have deposed at the trial of the cause, and such memorandum shall be written and signed with his own hand, and shall form part of the record.

CXXXVI.

If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, at any time after summons issued, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the other party if the day be fixed in his absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner herein-after prescribed; and the deposition so taken down may be read in evidence at the trial, or any hearing of the cause.

But a witness may for special cause be examined immediately.

CXXXVII.

All witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence, and they shall, upon such examination, be found to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Witnesses to be examined without oath, affirmation, or warning.

Of Commissions to examine absent Witnesses and make local Inquiries.

CXXXVIII.

When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Judge to be personally examined, or is a person exempted by law absolutely, or at the discretion of the Court, by reason of rank, sex, or other special cause, from personal appearance in Court, the Court may, on the application of any of the parties to the suit, order a Commission to issue for the examination of the witness on interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions for taking such examinations, as well within the jurisdiction of the Court wherein the suit shall be pending as without, as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Judge may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of the High Court, but within its general jurisdiction, the Commission shall ordinarily be issued to the Court within whose particular jurisdiction the witness may reside, or which can most conveniently execute the same; but under special

Cases in which Court may issue a Commission to examine witnesses.

Where the witness is within the Court's jurisdiction.

Where the witness is beyond the Court's jurisdiction.

circumstances, which may appear to render a different course expedient, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXXXIX.

Where the witness is within the local jurisdiction of the High Court.

If the witness be resident within the local jurisdiction of the High Court, the Commission shall ordinarily be issued to the Court of Small Causes at Madras [*Bombay*], but may, under special circumstances, be directed to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXL.

Where the witness is beyond the general jurisdiction of the High Court.

Where the evidence is required of a witness who is resident at some place beyond the general jurisdiction of the High Court, the application for a Commission to examine the witness must in all cases be made to the High Court. If the suit in which the evidence of the witness is required be pending in some other Court than the High Court, the application must be accompanied by a certificate from the Court in which the suit is pending, that the application is made with its permission. In all cases of an application to the High Court for a Commission to examine a witness, the Commission may be issued to any person or persons whom the High Court may think proper to appoint; and whenever a Commission is issued from the High Court for the examination of a witness in a suit pending in any other Court the Commission shall be made returnable to the Court in which the suit is pending.

CXLI.

Commission to be returned with the depositions of the witnesses.

After the Commission has been duly executed, it shall be returned, together with the deposition or depositions of the witness or witnesses who may have been examined thereunder, to the Court out of which the Commission issued (except as in the last preceding article mentioned), unless otherwise directed by the order for issuing the Commission, and then it shall be returned in terms of such order, and it shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by law absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court, at its discretion, to authorize the reading of the deposition. And all depositions taken under any Commission which may be issued as aforesaid, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

When depositions may be read in evidence.

CXLII.

Commission for local investigations.

In suits regarding lands or houses, or their limits or boundaries, in which the Court may deem a local investigation to be requisite or proper, for the purpose of elucidating the matters in dispute, the Court may issue a Commission to any person whom it may think proper to appoint, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine, not only such witnesses as may be produced to him by the parties or any of them, but any other person or persons whom he may think proper to call upon to give evidence in the matters referred to him; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the Commissioner during the investigation of the matters committed to him, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the Commissioner, as they would incur for the same offences in suits tried before the Court; provided that the Commissioner shall report

the order to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order. The Commissioner shall, after such local inspection as he may deem necessary, and after reducing to writing, in the manner herein-before prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions of such witnesses as he may have examined, shall return the depositions, together with his report in writing, subscribed with his name, to the Court issuing the Commission. The report and depositions shall be taken as evidence in the cause, and shall form part of the record; but it shall be competent to the Court, or to the parties or any of them with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him, or mentioned in his report, or the manner in which he may have conducted the investigation. The Court may order such sum to be paid to the Commissioner as may be thought reasonable for his trouble and expenses, and the sum so ordered to be paid shall be considered as costs in the cause, unless the Court shall otherwise direct.

The report of the Commissioner to be taken as evidence in the cause; but he may be examined in person.

CXLIII.

In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Judge to appoint any person whom he may think proper to be a Commissioner, for the purpose of making such investigation or adjustment, and to direct that the parties or their attornies or vakeels shall attend upon the Commissioner during such investigation or adjustment. In all such cases the Judge shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further inquiry as may be requisite, and will pass such ultimate judgment or order as may appear to him to be right and proper in the circumstances of the case.

A commissioner may be appointed to investigate and adjust accounts.

Of Judgment and Decree.

CXLIV.

When the exhibits have been perused and considered, and the witnesses examined, and the parties have been heard in person, or by their respective Advocates, Attorneys, or Vakeels, the Court shall pronounce its judgment, either immediately or on some future day, of which due notice shall be given to the parties or their Attorneys or Vakeels.

When judgment is to be pronounced.

CXLV.

In any suit concerning the succession or right of inheritance to any zemindary, talook, land, house, or other real property, where more persons than one would, by the Hindoo or Mahomedan Law, be entitled to a portion of the estate, the decree shall adjudge the property, as far as may be practicable, among all the heirs in the proportions to which they may be respectively entitled.

Rights of all the heirs to be declared in cases of succession.

CXLVI.

In all suits in which issues have been framed the Judge shall state his finding or decision on each separate issue.

The Judge to state his decision on each issue;

CXLVII.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Judge shall have full power to award and apportion costs, in any manner he may deem proper, except in so far as is herein otherwise provided.

and to direct by whom costs are to be paid.

CXLVIII.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the

What is included in costs.

decree that may have been passed therein, such as the expense of summoning the Defendants, fees of Advocates, Attorneys, or Vakeels, or officers of court, and subsistence money to peons or other persons employed in serving processes, charges of witnesses, and sums awarded to commissioners either in taking evidence or in local investigations.

CXLIX.

How the judgment is to be delivered.

The judgment shall be pronounced in open Court, and in all Courts except the High Court it shall be imperative on the Judge to state the reasons for his judgment at the time of pronouncing the same. The judgment shall in all cases be written out and signed by the Judge. The judgment shall be written out in the vernacular language of the Judge, except when the Judge, being a native of the country, and sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, may prefer to write his judgment in English, and in that case the judgment may be written out in the English language. Whenever the judgment is written out in any other language than that which is in ordinary use in the proceedings before the Court, the judgment shall be translated into such language so being in ordinary use in the Court, and the translation shall also be signed by the Judge.

CL.

What the decree is to contain.

The decree shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, the title of every exhibit produced in the cause, and the names of any witnesses who may have been examined, and a distinct statement of the issues when any may have been framed. It shall also contain an exact copy of the ordering part of the judgment or a translation thereof in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge.

CLI.

Copies of the decree to be furnished gratuitously.

Copies of the decree shall be furnished gratuitously to the parties or their Attorneys or Vakeels, on application to the Clerk or other proper officer of the Court.

CLII.

When a native officer or soldier is a party to the suit, a copy of the decree is to be sent to his commanding officer.

When a native officer or soldier in the service of the Government is a party to a suit, and is not present at the time of its decision, an authenticated copy of the decree shall be transmitted by the Court to the commanding officer of the corps or detachment to which such native officer or soldier shall belong, for the purpose of its being communicated to him.

CHAPTER III.

Execution or Enforcement of Decrees.

CLIII.

How decrees are to be enforced.

If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom the same may have been adjudged; if the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by imprisonment of the party adjudged to perform the same, or by attaching his or their property, and keeping the same under sequestration until further order of the Court, or by both imprisonment and sequestration if necessary; if the decree be for money, it shall be enforced by the imprisonment of the party against whom the same may have been adjudged, or the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant.

Application for Execution.

CLIV.

Application for execution how to be made.

The application for execution of a decree shall be made to the clerk or other proper officer of the Court by the applicant in person, or through his Attorney or Vakeel in the cause, or some other Attorney or Vakeel duly appointed to act for him in that behalf, in manner herein-before mentioned.

CLV.

If the person by or against whom the decree has been obtained shall die or become bankrupt or insolvent, application for execution may be made by or against his legal representative.

If any person in whose favour a decree has been passed shall die or become bankrupt or insolvent after such decree, and before execution shall be fully had thereon, application for execution of the decree may be made by or on behalf of the legal representative or representatives, or the assignee or assignees, of the person so dying or becoming bankrupt or insolvent as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly. And, in like manner, if any person against whom a decree has been passed shall die after such decree, and before execution has been fully had thereon, application for execution thereof may be made against the legal representative or representatives or the estate of the person so dying as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly.

CLVI.

Particulars to be given with the application.

The application for execution of a decree shall be accompanied with the following particulars distinctly written in the language in ordinary use in proceedings before the Court, viz., the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, if the suit were for money; the amount of costs, if any were awarded; the name of the person or persons against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of the property specifically decreed, the arrest and imprisonment of the person or persons named, or attachment of his or their property.

CLVII.

Further particulars when the application is for an attachment of immoveable property.

When the application is for an attachment of the defendant's land or other immoveable property, it shall also be accompanied with an inventory or list of such property, containing such a description of each item thereof as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to government, or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the jummah of such estate, and the names and shares of the registered proprietors.

CLVIII.

The application for an attachment of moveable property may be special or general.

Where the application is for an attachment of the defendant's moveable estate, or any part thereof, or of debts or money belonging to him, it may also be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of each item thereof; or the plaintiff may apply for a general attachment of the defendant's moveable estate, debts, and money wheresoever the same can be found, to the amount of the judgment and costs.

CLIX.

Duty of the officer on receiving the application.

The Clerk or other proper officer of the Court, on receiving any application for execution of a decree, accompanied with the particulars above mentioned, or such of them as may be applicable to the case, shall compare the same with the original decree contained in the record of the cause; and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made in the register of the suit. If the par-

ticulars shall not be found to correspond with the original decree, the Clerk or other proper officer shall either return them for correction to the person making the application, or shall, with the consent of such person, make the necessary correction himself.

Measures required in certain Cases preliminary to the Issue of the Warrant.

CLX.

In certain special cases, the defendant may be called on to show cause.

If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be solicited by or against individuals being heirs or representatives of the original parties in the suit, or against one only of several individuals equally affected by the decree, or if it shall appear that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing or property adjudged, or by the payment of the sum decreed, either in whole or in part, or by giving security for the same, or entering into an instalment bond or otherwise, or where the decree is for the delivery of a specific moveable, or for the specific performance of a contract or any other particular act, and the application is for the enforcement thereof by imprisonment of the party adjudged to deliver or perform the same, the clerk or other proper officer of the Court shall, instead of proceeding to the immediate enforcement of the decree, submit the application for execution thereof to the Judge; and it shall be competent to the Judge, if he shall think proper, to issue a notice to the party against whom execution may be sued for, requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by attorney or vakeel, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order as in the circumstances of the case may appear to be just and proper.

CLXI.

Application for a general attachment of moveable property must be referred to the judge.

Where the application is for a general attachment of the moveable estate of the defendant, the clerk or other proper officer of the Court shall submit the application to the judge, and it shall be competent to the judge, if he shall think proper, (and if the plaintiff shall in person, or by his agent, give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person or persons than the defendant,) to direct that an order do issue for the attachment of the defendant's moveable property wherever the same may be found, to the amount of the judgment and costs, or such other sum as may be specified in such order.

CLXII.

The judge may summon and examine the defendant as to his means of payment.

Before granting the order for a general attachment, or upon the application of the plaintiff at any time after judgment and before complete execution of the decree, the judge may summon the defendant, and examine him as to his property and his means of satisfying the judgment, in the same way as if he were not a party to the suit.

CLXIII.

If the judgment be by default and for land, a proclamation for claimants to be issued before execution.

If the decree be for a zemindary, talook, land, house, or other real estate or property, or any share therein, and the judgment shall have been passed against the defendant or defendants by default, the clerk or other proper officer of the Court, before proceeding to execute the decree, shall issue a proclamation calling upon all persons having any claim to the property in question to appear on a certain day, to be specified in the proclamation, and which shall not be later than fifteen days from the date of the application for the execution of the decree, either in person or by an attorney or vakeel, and be prepared to state their claims to the Court, and support them by sufficient evidence.

CLXIV.

The proclamation shall be read aloud by the bailiff or other proper officer in some public place within the limits of or adjacent to the zemindary, talook, land, house, or other real estate, or property, for which, or a share in which, the judgment by default may have been given, and a copy thereof shall be fixed up in some conspicuous part of the Court House; and if the judgment by default shall have been given by any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the judgment may have been given.

How the proclamation is to be published.

CLXV.

If no claimant to the property shall appear on the day fixed in the proclamation, either in person or by attorney or vakeel, to offer any objection to the execution of the decree, the Court shall order the decree to be executed in the same manner as if the judgment had not been given by default.

If no claimant appear, execution to issue.

CLXVI.

If on the day fixed in the proclamation, any claimant to the property shall appear, in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall proceed forthwith to investigate the same, in the like manner and with the like powers as if the claimant had been originally made a defendant to the suit, but shall restrict its inquiry to the fact of possession only; and if it shall appear to the satisfaction of the Court, that the zemindary, talook, land, house, or other estate or property mentioned in the decree was not in the possession of the party against whom the judgment by default may have been given, nor in the occupancy of ryots, or cultivators, or other persons, paying rent to him at the date of the commencement of the suit, the Judge shall pass an order to stay execution of the decree, and shall call upon the party applying for execution thereof to show cause why the judgment should not be set aside and cancelled. And if the party shall fail to show such cause to the satisfaction of the Court, the Court shall forthwith cancel the said judgment, and an entry of the cancellation shall be made in the Register of the suit. If it shall appear to the satisfaction of the Court that the zemindary, talook, land, house, or other estate or property mentioned in the decree, was in the possession of the party against whom the judgment by default was given, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the date of the commencement of the suit, it shall direct the decree to be executed in the same way as if the judgment had not been by default. The decision of the Court in the investigation mentioned in this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Investigation of claims, how to be made.

Issue of the Warrant.

CLXVII.

When the clerk or other proper officer of the Court is satisfied as to the particulars above referred to, and all necessary preliminary measures have been taken when any such are required, he shall forthwith prepare and issue, under the seal of the Court, the proper warrants for the execution of the decree.

Warrant to be under seal of Court.

CLXVIII.

Every warrant for execution of decree shall bear date on the day on which the same shall be issued, and shall be sealed with the seal of the Court, and delivered to the bailiff or other proper officer. A day shall be specified at the bottom of the warrant on or before which it must be executed, and the bailiff or other proper officer shall in all cases indorse upon the order the day and the manner in which it was executed, and shall return it with such indorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be indorsed.

Of the Execution of Decrees for Immoveable Property.

CLXIX.

How immoveable property is to be delivered when not in the occupancy of ryots.

If the decree be for a house or other immoveable property not in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

CLXX.

How it is to be delivered when in the occupancy of ryots.

If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, at some convenient place or places, the substance of the decree in regard to the property.

CLXXI.

Obstruction to execution of decree for land.

If the decree shall be for the possession of a zemindary, talook, land, house, or other real estate or property, or share therein, and the party or parties in whose favour the same shall have been adjudged shall be resisted or obstructed by any person or persons in obtaining effectual possession thereof, and shall make an application to the Court, either in person or by attorney or vakeel, at any time within one month from the date of the officer's return to the warrant for execution of the decree, the Court shall fix a day for investigating into the matter of his complaint, and if reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question has been occasioned by the defendant or defendants, or by some other person or persons at his or their instigation, the Court shall issue a summons to the defendant or defendants calling upon him or them to appear, on the day appointed for the investigation, to attend and give evidence.

Defendant may be summoned if suspected of implication.

CLXXII.

Court now to proceed if he cannot be found or fails to attend.

In all cases in which a summons shall be issued for the attendance of a party at any time or for any purpose after judgment, the summons shall be served in the manner herein-before prescribed for the service of a summons upon a witness, and if he cannot be served in either of the ways specified in Article CXIX., or if after being served he shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, he shall be liable to be dealt with in the same way as if he were not a party to the suit, and as any other person would be dealt with in the like circumstances, under Articles CXXIII., CXXXI., and CXXXII. respectively.

CLXXIII.

How defendant may be dealt with if he persists in obstructing the plaintiff.

If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was caused or occasioned by the defendant or defendants, or by any other person or persons at his or their instigation, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or defendants, or some person or persons at his or their instigation, the Court may, without prejudice to the operation of the provisions of Article CCIX., commit the defendant or defendants to close custody until further orders.

CLXXIV.

Obstruction by a *bonâ fide* claimant.

If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person or persons claiming *bonâ fide* to be in possession of the estate or property on his own account, or on account of some other person or persons than the defendant or defendants to the suit, the Court shall, without prejudice to the operation of the provisions of Article CCIX., proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a defendant to the suit, and shall pass such order for staying

execution of the decree, or executing the same, as it may deem proper in the circumstances of the case; and the order of the Court shall not be subject to appeal, but the party against whom the same may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Of the Execution of Decrees for Money by Attachment of Property.

CLXXV.

What property may be attached in execution of decree.

If the decree be for money, and the person or persons applying for execution thereof shall desire that the amount shall be levied from the estate and property of the person or persons against whom the same may have been pronounced, the Court shall cause the attachment of any lands, houses, goods, chattels, effects, money, bank notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, or other property whatsoever, moveable or immoveable, belonging to the defendant or defendants, and whether the same be held in his or their own name or names, or by another person or other persons in trust for him or them, or on his or their behalf, to the amount or value of the sum decreed and costs, or to such extent as may be deemed necessary for the purpose of securing the satisfaction and payment of such amount and costs.

CLXXVI.

The attachment is to be made by seizure when the property is goods and chattels.

By seizure or by prohibitory order when it is real estate.

By prohibitory order only when it is debts.

By notice when it is money in deposit in a Court of Justice or Government office.

Where the property shall consist of goods, chattels, effects, or other moveable estate, the attachment shall be made by actual seizure, and the bailiff or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof. Where the property shall consist of lands, houses, or other immoveable estate, the attachment may also be made by actual seizure, but it shall be in the option of the Court, if it shall think proper, instead of directing its officer to make seizure and assume possession of the property, to issue a written order prohibiting the sale, mortgage, gift, or other transfer thereof, and all persons from receiving or taking the same by purchase, gift, or otherwise howsoever, and also prohibiting all ryots or cultivators and other tenants and occupiers of the land from paying their rents to any person or persons whomsoever, until the further order of the Court; with permission in the meantime to pay their rents into Court, to the treasurer or other proper officer who may be authorized to receive or grant receipts for the same. Where the property shall consist in whole or in part of debts, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made in all cases by a written order of the Court, prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof until such further order. Where the property shall consist in whole or in part of money standing in the name of the defendant or to his account, and in deposit in any Court of Justice or office of Government, or of interest on Government paper, the attachment shall be made by a notice to such Court or office requesting that the money or interest may be held, subject to the further orders of the Court by which the notice may be issued.

CLXXVII.

When the attachment is by prohibitory order, how the order is to be made known.

In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to the same lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court House; and if the lands, houses, or other immoveable property are situated beyond the limits of the town of Calcutta, a copy of the written order shall also be fixed up in the cutchery of the collector of the zillah in which the lands, houses, or other immoveable property may be situated. In the case of debts, the written order shall also be fixed up in some conspicuous part of the

Court House, and copies of the written order shall be sent by post to each individual debtor. And in the case of shares in the capital or joint stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court House, and a copy of the order shall be sent to the manager, secretary, or other proper officer of the company.

CLXXVIII.

All private alienations of property under attachment to be null and void.

After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property or shares attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends to the defendant or defendants, during the continuance of the attachment, shall be null and void.

CLXXIX.

The Court may direct money or bank notes to be paid to the plaintiff,

or other attached property to be made over to him at a reasonable price,

or sold by public auction.

In all cases of attachment under the preceding articles, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes, or a sufficient part thereof, shall be paid over and delivered to the party or parties applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be transferred and delivered to the party or parties applying for execution of the decree, if he or they shall be disposed to accept the same in satisfaction or part satisfaction of the amount decreed and costs, at the market value or such price as the Court may deem fair and reasonable; or that any part of the property so attached shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party or parties.

CLXXX.

Where the property consists of debts or real estate a manager may be appointed.

Where the property attached shall consist of debts due and owing to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable estate or property, it shall further be competent to the Court to appoint a manager of the said estate or property, with power to sue for and compound for the debts, and to collect the rents or other receipts and profits, or to raise money by mortgage or conditional sale of the land or other immoveable property, and to make and execute such deeds or instruments in writing as may be necessary or requisite for the purpose, and to pay and apply the same rents, profits, or receipts, or money so to be raised, towards the payment and satisfaction of the amount of the decree and costs; and in any case in which a manager shall be appointed, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

CLXXXI.

Attachment to be released after full satisfaction of the decree.

When full satisfaction shall be made of the amount decreed and costs, with all charges and expenses which may be incurred by the said attachment, or the same shall be otherwise paid and satisfied by the defendant or defendants, the attachment shall be forthwith released; and if the defendant or defendants shall desire that due intimation shall be given of such release, the order for the release of the attachment shall, at his or their expense, be proclaimed and intimated in the same manner as herein-before prescribed for the proclamation of the attachment.

Of Claims to attached Property.

CLXXXII.

How claims and *objections to sale of attached property are to be investigated.*

In the event of any claim being preferred to or objection offered against the *sale of lands or any other real or personal property which may have been attached in execution of a decree,* or under and by virtue of any order for *sequestration which may be passed before judgment,* as not belonging to the defendant or defendants, and consequently not liable to be sold in execution of a decree against him or them, the Court shall, subject to the proviso

contained in the next succeeding article, proceed to investigate the same in the same manner and with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant or defendants as are contained in Articles CLXXI. and CLXXII. And if it shall appear to the satisfaction of the Court that the land or other real or personal property so advertised to be sold in execution of the decree was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, or that being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person or persons, the Judge shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other real personal property advertised to be sold in execution of the decree was in possession of the party against whom execution is sought, as and for his own property, and not for or on account of any other person or persons, or was in the possession of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, the Court shall pass an order disallowing the claim and shall direct the decree to be executed. The order which may be passed by the Court under this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right, at any time within one year from the date of the order.

CLXXXIII.

Claims and objections should be preferred at the earliest opportunity.

The claim or objection shall in all cases be preferred or made at the earliest opportunity to the Court that shall have ordered the attachment; and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding article; provided that if it shall appear that the preferring or making of the claim or objection has been designedly and unnecessarily delayed, with a view to obstruct the ends of justice, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular suit.

Of Sales in Execution of Decrees.

CLXXXIV.

Sales to be by public auction; exception as to Government paper.

Sales in execution of decrees shall be conducted by the proper officer of the Court, and shall in all cases be made by public auction in manner herein-after mentioned, except where the property to be sold shall consist of Government securities; and with respect to such securities, it shall be competent to the Court to authorize its officer, or any other person whom it may think proper to appoint, to sell and dispose of the same through a broker at the market rate of the day, and, if the endorsement of the party in whose name any such security is standing shall be required to transfer the same, to endorse such security thus "A.B. by C.D. by order of" (as the case may be), and in the meantime, until such sale, to receive any interest which may become due thereon, and to sign receipts for the same; and any endorsement which shall be made as aforesaid shall be as effectual to pass the said securities, and to give a good title to the holder thereof, and any receipt which shall be signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or signed by the party himself or his constituted attorney.

CLXXXV.

How other property taken in execution must be sold.

In all cases of intended sale, whether of moveable or immoveable property, in execution of any decree or other judicial process, where the property shall not consist of Government securities, and in all sales of Government securities, when the Court shall direct that the same be sold by public auction, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold, including the jummah of the estate when the

property to be sold is an estate paying revenue to Government, or any portion of any such estate, and of the amount for the recovery of which the sale is ordered, shall be made in the current language of the country, and at Calcutta it shall also be made in the English language, at least thirty days before the appointed day of sale, exclusive of the day of sale, and of the date on which the proclamation may be ordered. Such proclamation shall be made, in Calcutta, in the mode that has been usual in the case of sales by the sheriff, and at other places in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification to the same effect shall be affixed in some conspicuous place in the Court of the judge who shall have ordered the sale, and also in the Court of the Zillah judge, where the judge who ordered the sale is subordinate to the Zillah judge. When the attachment shall have taken place at some place beyond the limits of the ordinary original jurisdiction of the High Court, the written notification shall also be affixed in some conspicuous place within the town or village in which the attachment may take place, and the cutcherry of the collector, and also in the Court of the local moonsiff.

CLXXXVI.

Nothing but the right title and interest of the defendant guaranteed to the purchaser.

In all cases of a public sale of property in execution of a decree, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land or other property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree or other process in execution of which the sale is made.

CLXXXVII.

The process for attachment and sale may in certain cases be issued simultaneously.

The usual process for attachment and sale in such cases, when the property to be attached consists of goods, chattles, or other personal estate other than debts, may either be issued successively or simultaneously, as the Judge directing the sale may in each instance think proper; but no sale shall in any instance take place without a previous proclamation for the period specified in Article CLXXXV.; and any material irregularity in the sale which may be established on investigation to the satisfaction of the Court by whom the sale may have been ordered, shall be sufficient to invalidate the sale, provided that an application objecting to the sale on the ground of such irregularity be made to the Court by the party objecting thereto, either in person, or by Attorney or Vakeel, within one month after the sale.

CLXXXVIII.

The sale, if not objected to for irregularity, for if the objection is disallowed, shall become absolute.

If no such application as is mentioned in the last preceding Article be made within one month after the sale, or if such application shall be made and the objection shall be disallowed, the judge shall pass an order confirming the sale; and, in like manner, if such application shall be made, and if the objection be allowed, the judge shall pass an order setting aside the sale for irregularity. The order which may be passed in either case unless appealed from, and if appealed from then the order passed on the appeal, shall be final, and the party against whom the same has been given shall be precluded from bringing a fresh suit for establishing his claim.

CLXXXIX.

Certificate to be granted to the purchasers of land.

After the sale shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest, to all intents and purposes whatsoever, any law or practice to the contrary thereof notwithstanding.

CXC.

And delivery made of property sold as far as practicable.

When the property sold shall consist of goods, chattels, or other personal estate of which seizure has been made, the same shall also be delivered to the purchaser or purchasers thereof; and where it shall consist of lands, houses, or other immoveable property, the right, title, and interest of the defendant therein shall, as far as practicable, be delivered to the purchaser or purchasers thereof by erecting a pole upon some place within or adjacent to the

land or other immoveable property, and proclaiming by beat of drum, at some convenient place or places, to the occupants thereof, that the right, title, and interest of the defendant or defendants therein has been transferred to the purchaser or purchasers.

CXCI.

Whenever a public sale is set aside as invalid under Article CLXXXVII., or on any account whatever, the purchaser shall be entitled to receive back his purchase money on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside price to be returned to purchaser.

Of the Execution of Decrees by Imprisonment.

CXCII.

When a defendant under a decree is committed to prison in execution thereof, the judge shall fix whatever monthly allowance he shall think sufficient for his subsistence, not exceeding per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court, or of the gaol where the defendant may be in custody, by monthly payments in advance, on or before the 1st day of each month; the first payment to be made on the day of imprisonment for such portion of the current month as may remain unexpired.

Subsistence-money of a defendant in gaol how fixed and furnished.

CXCIII.

A defendant will be released at any time on the decree being fully satisfied, or at the request of the person or persons at whose instance he mayhave been imprisoned, or on such persons omitting to pay the allowance as above directed, for the space of twenty-four hours after it has become due; and further, his imprisonment on account of the decree which occasioned it shall not, in any case, exceed two years.

Imprisonment for debt limited to two years.

CXCIV.

Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the decree, and shall be recoverable from his property under the ordinary rules; but the defendant shall not be detained in custody or arrested on account of such disbursements.

Subsistence money to be added to amount of decree.

CXCV.

Any person in confinement under a decree who is not entitled to the benefit of any Act for the relief of insolvent or bankrupt debtors in India, may at any time procure his enlargement by making an application to the judge to that effect, and furnishing in writing a full and fair account of all his property of whatever nature, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, and of the places respectively where such property is to be found, and moreover assigning the whole of such property to such person as the Court may direct, or such part thereof as may be sufficient for the satisfaction of the decree. In such case the judge shall cause the Plaintiff to be furnished with a copy of the account of the defendant's property, and call on him within a reasonable period, to be fixed by the judge, to make proof of any fraudulent concealment or misrepresentation made by the defendant; and on his failing to make such proof within the period specified shall cause the defendant to be set at liberty.

Application may be made for release from confinement on a surrender of the whole of the debtor's property.

CXCVI.

But if the plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Judge that the defendant, for the purpose of procuring his enlargement without satisfying the decree, wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith, the Judge shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if he shall think

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally on

account of his fraud.

proper, send the defendant to the magistrate to be dealt with according to the provisions of Clause 193 of the Penal Code.

CXCVII.

Though the defendant be released, his property is liable for the decree.

A defendant once enlarged shall not again be imprisoned on account of the same decree except under the operation of the last preceding Article, but his property will continue liable, under the ordinary rules, to attachment and sale in satisfaction of the decree until the same shall be fully made.

CXCVIII.

Attaching creditor to be first paid out of property attached.

Whenever property is attached in execution of a decree, on the application of any person or persons, such person or persons shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree

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Of the Enforcement of a Decree out of the Jurisdiction of the Court by which it was passed.

CXCIX.

The decrees of any Courts may be executed beyond their own jurisdiction by other Courts.

A decree which cannot be enforced or executed within the jurisdiction of the Court by which it was passed may be enforced or executed within the jurisdiction of another Court, in the manner following:

CC.

How application is to be made for such execution.

The party may apply to the Court which shall have passed such decree for a copy thereof, and also for a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such decree that may have been passed. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate to be furnished; and the same shall be signed by the judge or one of the judges of the Court, and sealed with the seal of the Court.

CCI.

Judge certifying decree, how to describe himself.

If such Court shall be the principal Civil Court of original jurisdiction in the district, the judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

CCII.

Certificate to pass from Chief Court of the district to Chief Court where it is to be executed.

If the Court shall not be the principal Civil Court of original jurisdiction in the district, the copy of the judgment, and of the order for execution, if any, and the certificate of the judge shall without delay be transmitted to the principal Civil Court of original jurisdiction in the district; and the judge or one of the judges of such Court shall issue a certificate under his hand and the seal of the Court, verifying the signature of the Judge of the Court in which the decree shall have been given to the documents above mentioned; and in such certificate the judge signing the same shall describe himself as the judge or one of the judges of the principal Civil Court of the district, and shall also name the Court and the district.

CCIII.

Court applied to for execution, how to proceed.

All copies and certificates, which may be furnished by or transmitted to the principal Civil Court of original jurisdiction in the district in which such decree shall have been given, shall be transmitted by such Court without delay to the principal Civil Court of original jurisdiction in the district in which the party may wish to have the decree enforced or executed; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any judge, unless the Court to which such documents shall be transmitted shall, under any peculiar circumstances, to be specified in an order, require the same.

CCIV.

Decree or order transmitted, to be

The copy of any decree, or of any order for execution, when filed in the Court to which it shall be transmitted, for the purpose of being executed or

enforced as aforced, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may be enforced or executed by such Court, or any Court subordinate thereto, to which it may entrust the enforcement or execution thereof.

executed as that of the Court.

CCV.

When application shall be made to any of the said Courts to enforce or execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to enforce or execute the same, according to its own rules in the like cases; and the last-mentioned Court shall take cognizance of and punish all wrongful acts or irregularities done or committed in enforcing or executing such decree; and all persons disobeying or obstrubting the enforcement or execution of any such decree shall be punishable by such last-mentioned Court in the same manner as if the said decree had been pronounced by such Court.

Execution how to be enforced by Court applied to.

CCVI.

An appeal shall lie from any order of a Court for enforcing or executing the decree of another Court, in the same manner, and subject to the same rules, as if the decree had been originally passed by the Court making such order.

What appeal from orders for execution under this Act.

CHAPTER IV.

Of Contempts and Disobedience of Orders.

CCVII.

Any Judge or Court of Justice shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their Courts, and to punish the persons committing them, as therein authorized.

Disobedience of Orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior or insulting him, or neglecting his duty.

CCVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CCIX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Contempt of lawful authority under Chapter IX.

Chapter IX. of the Penal Code is entituled "Contempts of the lawful Authority of Public Servants."

CCX.

Provided that Principal Sudder Ameens and Moonsiffs shall not exceed the powers of punishment conferred on them respectively as Judges of subordinate Criminal Courts, in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that when a person has been sentenced to punishment under the provisions of the last preceding article for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge or Court of Justice to remit the punishment, on the submission of the offender to the order or requisition of such Judge or Court of Justice.

Ordinary powers of punishment not to be exceeded.

Punishment may be remitted on submission of the Offender.

The Articles under the head of Contempts are a repetition, *mutatis mutandis*, of the Articles contained under Chapter VIII. of the Code of Penal Procedure, and are here inserted for the guidance of the Civil Judge.

CHAPTER V.

Reference to Arbitration.

CCXI.

Reference on application of the parties.

If the parties to a suit are desirous that the matters in difference between them shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

CCXII.

Application how to be made.

The application shall be made by the parties in person, or through one of the attorneys or vakeels of the Court, specially authorized in that behalf by an instrument in writing, which shall be presented to the Judge at the time of making the application, and shall be filed with the proceedings in the cause.

CCXIII.

Appointment of arbitrators may be made by Court at the desire of parties.

If the parties cannot agree with respect to the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, or having accepted it shall refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint some proper person or persons to be the arbitrator or arbitrators, as the case may be.

CCXIV.

Order of reference.

The Court shall fix such time as it may think reasonable for the delivery of the award, and shall by an order under its seal, in which the time so fixed shall be specified, refer to the arbitrator or arbitrators the matters in difference in the suit between the parties.

CCXV.

When the reference is to two or more, the order shall provide for difference of opinion.

If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint their own umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree as to any of these particulars, as the Court itself may determine.

CCXVI.

Power to Court to direct arbitration.

If on the day mentioned in the summons or at any subsequent hearing of the cause it shall appear to the Judge that the matter in dispute between the parties consists wholly or in part of matters of mere account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of court, or to some other proper person whom the Judge may think fit to appoint, upon such terms as to costs and the remuneration of the arbitrator, or otherwise, as the judge shall think reasonable.

CCXVII.

Court may determine particular facts or points of law.

If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law or fact fit to be decided by the Court, it shall be lawful for the Judge to decide such question of law or fact, and his decision thereupon shall be taken and acted upon by the arbitrator as conclusive.

CCXVIII.

If action be commenced by one party to a deed of arbitration, Court may stay proceedings.

Whenever the parties to any deed or instrument in writing shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any suit against the other party or parties, or against any person or persons claiming through or under him or them, in respect of the matters so agreed to be referred or any of them, it shall be lawful to the Court in which the suit is brought, on application by the defendant or defendants at his or their first appearance before the Judge, in obedience to any summons that may be issued in such suit, upon being satisfied that no sufficient reason exists why such matters cannot be or

ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the commencement of such suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make an order for staying all proceedings in such suit, on such terms as to costs or otherwise as to such Court may seem fit: provided always, that any such order may at any time thereafter be discharged or varied as justice may require.

CCXIX.

Powers of arbitrators.

Upon any reference by an order of Court, whether compulsory or by consent, the arbitrator or arbitrators and umpire shall have all the like powers as the Court would have in the like circumstances; and the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators, or umpire, or the parties, may desire to have examined, as the Court is authorized to issue in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators, or umpire, during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the arbitrator or arbitrators, or umpire, as they would incur for the same offences in suits tried before the Court; provided, that the arbitrator or arbitrators, or umpire, shall report the order, with the reason for making it, to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order.

CCXX.

Extension of time for making award.

In cases where the arbitrators or umpire shall not have been able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award if it shall think proper. In any case in which an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

CCXXI.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

If, in any case of reference to arbitration by an order of Court, the appointed arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court, on the application of the parties, or any of them, to appoint a new arbitrator or arbitrators, or umpire, in the place or stead of the person or persons so dying, or refusing or becoming incapable to act; and where two arbitrators are at liberty by the terms of the order of reference to appoint an umpire and do not appoint an umpire, then and in every such instance any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven clear days after such notice shall have been served no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid, upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this article, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

CCXXII.

Award how to be submitted to Court.

When a final award in a cause shall be made, either by the arbitrators or umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause.

CCXXIII.

Arbitrator may state special case.

It shall be lawful for the arbitrator or arbitrators and umpire, upon any reference, by an order of Court, whether compulsory or by consent of parties, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

CCXXIV.

Power to send back to arbitrator.

In any case where reference shall be made to arbitration as aforesaid, the Court shall have power at any time and from time to time to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the same arbitrator or arbitrators or umpire, upon such terms as to costs and otherwise as to the said Court may seem proper.

CCXXV.

Judgment to be pronounced in terms of the award.

If the Court shall not see cause to remit the matters referred for reconsideration in manner aforesaid, it shall pronounce judgment conformably to the award, unless the same shall be set aside, or to its own opinion on the special case if the award shall have been submitted to it in the form of a special case, and the decree shall be carried into execution in the same manner as other decrees of the Court.

CCXXVI.

Applications to set aside the award.

All applications to set aside any award made on a compulsory reference, or a reference by consent of the parties, shall be made within ten days after the same has been submitted to the Court; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, judgment shall be pronounced as mentioned in the last preceding article, and such judgment shall be final between the parties.

CHAPTER VI.

Of Proceedings on Agreement of Parties.

How Questions may be raised for the Decision of a Civil Court by any Persons interested.

CCXXVII.

Questions of fact, or of law or equity may be raised by agreement for the decision of any Court having jurisdiction.

Parties interested or claiming to be interested in the decision of any question or questions of fact, or law or equity, may enter into an agreement which shall not be subject to any stamp duty, that upon the finding of a Judge, in the affirmative or negative of such question or questions of fact, or of law or equity, a sum of money fixed by the parties, or to be determined by the Judge, shall be paid by one of the parties; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts specified in the agreement. Where the agreement is for the delivery of some property, moveable or immoveable, or for the doing or performing, or the refraining to do or perform any particular act or acts, the estimated value of the property to be delivered, or to which the act or acts specified may have reference, shall be stated in the agreement.

CCXXVIII.

The agreement to be filed and numbered as a cause.

The agreement may be filed in any Court having jurisdiction in the matter, with the proper officer, and when so filed shall be numbered and registered as a cause between some or one of the parties interested, or claiming to be interested, as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendant.

CCXXIX.

Parties to be subject to the Court's jurisdiction.

After the agreement shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and shall be bound by the statements therein.

CCXXX.

Hearing and disposal of the case.

The case shall be set down for hearing as an ordinary suit; and if the Judge shall be satisfied, after an examination of the parties, their attorneys or vakeels, or taking such evidence as he may deem proper, that the agreement was duly

executed by the parties, and that they have a *bonâ fide* interest in the question or questions of fact or of law or equity stated therein, and that the same is or are fit to be tried or decided, he shall proceed to record and try, or hear the same, and deliver his finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon his finding or deciding upon the question or questions of fact or of law or equity, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Of Special Cases for the Opinion of the High Court.

CCXXXI.

Special case may be stated by any persons interested.

Persons interested or claiming to be interested in any question as to the construction of any Act of Parliament, or any Regulation of the Madras [*Bombay*] Code, or Act of the Council of India, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter or thing, may, with the consent of a Judge of the High Court, concur in stating the same in the form of a special case for the opinion of the Court; and all executors, administrators, and trustees may concur in such case.

CCXXXII.

What it is to contain.

Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby, and shall be signed by the parties or their advocates, attorneys, or vakeels.

CCXXXIII.

To be filed and numbered as a cause.

The special case shall be filed with the proper officer of the Court, and shall be numbered and registered as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendants or defendant.

CCXXXIV.

Parties thereto to be subject to Court's jurisdiction.

After the special case shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and such of the parties as are legally competent to bind themselves, shall, for the purposes of such special case, be bound by the statements therein; and the parties who are not legally competent to bind themselves shall also be bound by the statements therein, if the Court shall think proper so to direct, after taking such precautions as may be deemed necessary for protecting the rights of such parties.

CCXXXV.

Hearing and disposal of the case

The special case shall be set down for hearing as an ordinary suit, and the Court, after hearing the parties, their advocates, or vakeels, shall proceed to determine the questions raised therein, or any of them, and to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and every such declaration of the Court shall have the same force and effect as such declaration would have had, and shall be as binding to the same extent as such declaration would have been, if contained in a judgment pronounced in a contested suit. Provided, that, if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

CHAPTER VII.

Of Appeals.

Appeals from Final Decrees.

CCXXXVI.

In what cases appeals shall lie from decisions of Judges, Principal Sudder Ameens, and Moonsiffs.

An appeal shall lie, as herein-after provided, from the decisions of the Judge, the Principal Sudder Ameen, and of the Moonsiff, in all suits in which the property, or possession, or right of occupancy of land or other real property, or the right to receive rent or profit issuing out of land or other real property, or the right to hold land or other real property exempt from the payment of rent or revenue, or anything in the nature thereof, or the right to hold land or other real property subject to the payment of a fixed annual sum on account of rent or revenue, or anything in the nature thereof, or the right to any benefits, liberties, or privileges derived out of or affecting any landed or other real property, or the right to receive or collect any customary or other payments or gratuities on any account whatsoever, or the title to any office, or to any trust, or special privileges, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question; and in all suits in which the right of inheritance from, or succession to, any person, or the validity of any marriage, divorce, will, or authority to adopt, or of any decree, bequest, or limitation under any will or settlement, or the condition or *status* of any person, in respect of relationship, religion, caste, or otherwise, or the custody or guardianship of any person, may be disputed; and in all suits for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage; and in all suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

CCXXXVII.

When it shall not lie.

An appeal shall also lie from all other decisions of the Judge, the Principal Sudder Ameen, and Moonsiff, except in suits in which the amount claimed does not exceed the sum of fifty rupees.

CCXXXVIII.

When the appeal from the Principal Sudder Ameen and Moonsiff shall be to the Zillah Judge, and when to the High Court.

In suits in which the amount claimed, or the value of the property claimed, does not exceed the sum of one thousand rupees, the appeal from the decision of the Principal Sudder Ameen, or Moonsiff, as the case may be, shall be to the Zillah Judge; in suits above that sum, to the High Court at Madras [*Bombay*]. And in suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages, the appeal from the decision of the Principal Sudder Ameen shall be to the High Court.

CCXXXIX.

The decision of the Zillah Judge in appeal is final.

The decision of the Judge in appeals from the decision of the Principal Sudder Ameen, or Moonsiff, shall be final; provided, however, that it shall be competent to the Judge, at the time of deciding an appeal from the judgment of a Principal Sudder Ameen or Moonsiff, to record his opinion, certifying in his judgment his reasons for the same, that the case is one for revision by the High Court, and when he shall have so certified, the High Court shall admit a special appeal from the decision of the Zillah Judge, in the event of either of the parties making application to that effect.

CCXL.

In original suits the appeal from the Zillah Judge shall be to the High Court.

The appeal from the decisions of the Judge, in original suits, shall be to the High Court at Madras [*Bombay*].

CCXLI.

An appeal lies from Judges of the High Court exercising original jurisdiction to the High Court in its appellate capacity.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

CCXLII.

In all cases of appeal from decisions of the Courts of original jurisdiction mentioned in the last preceding article, the Appellate Court shall consist of a greater number of Judges than the Court which passed the decision appealed from. And in all cases whatsoever if there should be a difference of opinion among the Judges of the Appellate Court the decision shall be according to the opinion of the majority; and if the opinions of the Judges are equally divided, the decision of the Lower Court shall be affirmed.

How the Appellate Court is to be constituted.

Decision in all cases of appeal.

How Appeals are to be preferred.

CCXLIII.

The appeal shall be made in the form of a memorandum as herein-after prescribed, which may be presented in the Appellate Court, or in the Court in which the decision objected to was passed for transmission to the Appellate Court. In either case, the memorandum must be presented within the times herein-after specified, unless the appellant shall, by a petition to the Appellate Court, show sufficient cause for not having presented it within such limited periods; that is to say, within thirty-one days if the appeal be to the Zillah Judge, or be to the High Court from a decision of a Court of original jurisdiction constituted by one or more of its own Judges, and within ninety-one days if the appeal be to the High Court from the decision of a Zillah Judge, Principal Sudder Ameen, or Moonsiff; the days to be reckoned in all the cases as immediately following and exclusive of the day on which judgment was pronounced.

Appeal to be preferred by a memorandum to be filed within specified time.

CCXLIV.

An application for an extension of the time for presenting a memorandum of appeal may be made directly to the Appellate Court, or through the intervention of the Lower Court, at the option of the applicant. If the application for extension of time be made to the Lower Court, that Court shall record the reasons assigned for the application, and shall transmit a copy of its proceedings to the Appellate Court.

Time may be extended by an application.

CCXLV.

Every memorandum of appeal shall set forth concisely, and under distinct heads, grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. But the appellant shall not be tied down to the objections set forth by him in his memorandum of appeal.

What the memorandum is to contain.

The memorandum of appeal shall be in the following form, or to the following effect—

Form of memorandum.

Memorandum of Appeal.

(*Name, &c. as in Register.*)	Plaintiff.
(*Name, &c. as in Register.*)	Defendant.

[*Name of Appellant*] Plaintiff [*or* Defendant] above named appeals to the High Court at Madras [*Bombay*] [*or* Zillah Court at *as the case may be*], against the decree of the Moonsiff, or Principal Sudder Ameen of [*or as the case may be*], in the above cause, dated the day of ; for the following among other reasons.

CCXLVI.

If the memorandum of appeal be presented in the Court in which the decree objected to was passed, such last-mentioned Court shall forthwith forward the same to the Appellate Court, with an endorsement thereon of the date on which it was presented.

Memorandum to be forwarded to the Appellate Court.

CCXLVII.

What proceedings to be forwarded to the Appellate Court, and when.

Within one month from the date on which the memorandum of appeal shall be presented in the Lower Court, or one month from the date on which intimation shall be received by the Lower Court from the Appellate Court that the memorandum of appeal has been presented in the Appellate Court, unless the Appellate Court shall think proper to enlarge the time, and then within such enlarged time, the Judge of the Lower Court shall, except as provided in the next succeeding Article, certify under his hand and the seal of his Court the record duly made up and authenticated, including authenticated copies of all his own material proceedings in the cause, and the original depositions, exhibits, and every original paper read in the cause, together with the written statements, if any, that may have been presented by the parties, or any of them, and received and recorded by the Judge, and shall transmit the record so made up to the Appellate Court. Previous to transmitting the abovementioned papers to the Appellate Court the Judge of the Lower Court shall cause true and faithful copies of all the originals to be made out and authenticated by the proper officer of his Court, and deposited in the Court in lieu of the originals. The copies shall be records of the Court, and shall be received in evidence in any other Court in the same way as originals. In cases where any original deposition or other original proceedings or matter whatsoever shall have been previously entered in a book, which may likewise contain other proceedings in other distinct cases, or any other matter, so that such original papers cannot be transmitted to the Appellate Court without the other proceedings or matters, the Judge of the Lower Court, within the time and in the manner before directed, shall certify a true and authentic copy of such original papers, and that the original of each copy so transmitted is entered in such book. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings of the Court, the copy shall have the force and effect of the original, and the Judge shall transmit a copy of it to the Appellate Court, and shall in like manner certify that the original, after due search, cannot be found. A memorandum of all expenses which may be incurred in the preparation of copies of papers or otherwise, in or about the making up and transmitting the record, shall be forwarded therewith to the Appellate Court, and shall be considered costs in the cause.

CCXLVIII.

In certain appeals to the High Court the proper officer to attend in the Appellate Court with the original record of the case.

In appeals to the High Court from the Courts of original jurisdiction constituted by one or more of its own Judges, and in appeals from the Principal Sudder Ameen and Moonsiff to the Zillah Judge, the proper officer shall attend in the Appellate Court, from time to time as may be required, with the original record of the proceedings in the cause.

Of staying and executing Decrees under Appeal.

CCXLIX.

When and on what terms execution of decree may be stayed.

When any party or parties appealing is or are directed to pay any sum of money, or to perform any duty, or when the decree is for the possession of land or any other property, real or personal, the Court whose judgment is appealed from shall and is hereby empowered to award that its judgment shall be carried into execution, or that sufficient security shall be given for the performance of such judgment; provided always, that where the Court of Original Jurisdiction shall think fit to order the judgment to be executed, security shall be taken from the other party or parties for the due performance of such order or judgment as may be passed in the Court of Appeal. But this decision shall itself be subject to appeal.

Of Procedure in Appeals from final Decrees.

CCL.

When a memorandum of appeal shall have been presented in or transmitted to an Appellate Court, the clerk (or proper officer) of the Appellate Court shall endorse thereon the date of presentment if it was presented in the Appellate Court, or the date of receipt if it was transmitted from the Lower Court, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals.

How the appeal is to be entered.

CCLI.

The Register shall be kept in the form contained in the schedule (B.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all Courts of Justice in India.

Form of the register.

CCLII.

It shall not be necessary in any Court of Appeal to take any security for costs, but it shall be in the discretion of every such Court of Appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer.

Court of Appeal may, at its discretion, require security for costs from appellant.

CCLIII.

A day shall be fixed by the Appellate Court for the hearing and disposal of the appeal; which day shall not be earlier, in cases in which a record of the suit shall be transmitted by the Lower Court, than forty-two days from the day on which the record may have been received in the Appellate Court, and shall not be earlier, in cases appealable to the High Court, when the officer is required to attend the Appellate Court with the original record of the suit, than twenty-one days from the presentment of the memorandum of appeal, but shall otherwise be as early, in all cases, as can be conveniently fixed, with a due regard to the state of business in the Court; the days to be reckoned in all the cases as exclusive of the day of hearing, and of the day on which the record may have been received, or the memorandum of appeal presented, in the Appellate Court. Notice of the day which has been fixed for the hearing of the appeal shall be sent by the proper officer of the Appellate Court to the proper officer of the Lower Court from the decree of which the appeal has been preferred, and shall be served on the appellant and respondent, in the same way as herein-before provided for in respect to the service of a summons. The notice to the appellant shall contain an additional intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, either in person or by an attorney or vakeel of the Appellate Court, his appeal will be dismissed for want of prosecution. And the notice to the respondent shall contain an intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence.

Day to be fixed for hearing the appeal.

CCLIV.

On the day in that behalf mentioned in the notices, and unless the Court shall otherwise direct, from day to day, until the cause is called on, the parties, appellant and respondent, shall be in attendance in the Appellate Court, in person or by an attorney or vakeel of the Court, duly empowered in manner herein-before mentioned, to represent them in all matters relating to the prosecution or defence of the appeal.

The parties to be in attendance on day so fixed.

CCLV.

If on the day fixed for the hearing of the appeal, or on any other day subsequent thereto on which the cause may be called on, the appellant shall not appear in person, or by an attorney or vakeel of the Court, the appeal shall be dismissed for default. If the appellant appears in person, or by attorney or vakeel, and the respondent shall not appear in person, or by attorney or vakeel, the appeal shall be heard *ex parte* in his absence.

Consequences of non-appearance.

CCLVI.

When an appeal is dismissed, intimation to be sent to the Lower Court.

Where an appeal is dismissed for default, an intimation of the dismissal shall be sent to the Court of original jurisdiction, and the costs of preparing copies of papers, and making up and transmitting the record, may be realized from the appellant, under an order of that Court, to be enforced in the same manner as a decree of Court.

CCLVII.

How an appeal dismissed for default may be restored.

In all cases in which an appeal shall be dismissed for default of prosecution, it shall be competent to the appellant to apply within reasonable time to the Appellate Court, for the re-admission of his appeal. The application shall be accompanied with a certificate from the Court of original jurisdiction, that the costs mentioned in the preceding article, when ordered to be realized from the appellant, have been fully paid and satisfied; and if the Appellate Court shall think proper to grant such application, a day shall be thereupon fixed for the hearing of the appeal, and a fresh notice shall be issued to the respondent, to be served in the same way as the first notice, and with the like additional intimation as is herein-before provided; but it shall not be necessary to issue or serve any notice on the appellant.

CCLVIII.

The Appellate Court, how to give judgment.

The Appellate Court, after hearing the cause, shall proceed to give its judgment in the same manner as herein-before prescribed in regard to the judgment of Courts of original jurisdiction, for confirming, or reversing, or modifying and altering the decree of the Lower Court, as the Appellate Court shall think proper.

CCLIX.

No decision to be reversed for irregularity.

No decision shall be reversed or altered, nor shall any case be referred back to the Court of original jurisdiction, on account of any error, defect, or irregularity not affecting the merits of the case.

CCLX.

When a case may be remanded by Appellate Court.

If the Court of original jurisdiction shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Court of Appeal essential to the rights of the parties, and the decree of the Lower Court shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remit the case to the Lower Court, and cause the papers in the suit, together with a copy of the decree in appeal, to be transmitted to such Lower Court, with directions to proceed in the investigation of the merits of the case, and pass a decree therein.

CCLXI.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Court of original jurisdiction, except as provided in the preceding clause.

CCLXII.

When the Appellate Court may dispose of a case though the Lower Court has decided on other grounds.

When there is sufficient evidence upon the record of the Lower Court to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

CCLXIII.

When the Appellate Court may call for fresh evidence.

It shall not be competent to the parties in an appeal to produce additional evidence, whether of exhibits or witnesses; but if it appears that the Lower Court refused to admit competent evidence, or if the Appellate Court itself requires the production of exhibits or witnesses, as necessary to enable it to pronounce a satisfactory judgment, or if any other substantial cause demands a deviation from the ordinary rule, the Court may allow additional exhibits to be received, and the same and other witnesses to be examined; provided that whenever this power is exercised, the reasons for exercising it be recorded on the proceedings by the Appellate Court.

CCLXIV.

How additional evidence is to be taken.

Whenever additional evidence is permitted to be received, it shall be competent to the Court of Appeal to take such evidence before itself, or to require the Lower, or any other Court, or to empower any person, to take such evidence; and it shall also be competent to the Court of Appeal to prescribe the mode by which such evidence shall be taken; and the Court of Appeal shall be at liberty to proceed by all or any of the modes aforesaid.

CCLXV.

Points to be defined.

In all cases where additional evidence is permitted to be taken, the Court shall define the point or points to which the evidence is to be confined, and record the same in the minutes of the proceedings.

CCLXVI.

Powers of Appellate Court.

The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the cause, examining the parties or their attornies or vakeels, and awarding costs, or otherwise, as are herein-before contained in regard to Courts of original jurisdiction.

CCLXVII.

How the judgment of the Appellate Court is to be delivered.

In what language it is to be written.

The judgment of the Appellate Court shall in all cases be pronounced in open Court, and, after being written out, shall be signed by the judge or judges. The judgment shall be written out in the English language; and where that language is not the language in ordinary proceedings before the Court, the judgment shall be translated into the languages so being in such ordinary use, and the translation shall be signed by the judge.

CCLXVIII.

What the decree is to contain.

The decree of the Appellate Court shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and description of the parties appellant and respondent, the memorandum of appeal, a list of any additional exhibits that the Appellate Court may have allowed to be produced, and the names of any witnesses that it may have allowed to be examined. It shall also contain an exact copy of the ordering part of the judgment, or a translation thereof in the language in ordinary use in proceedings before the Court. The decree shall be sealed with the seal of the Court, and signed by the judge or judges who passed it, and copies shall be furnished to the parties in the same manner as herein-before provided for in regard to the decrees of Courts of original jurisdiction.

CCLXIX.

A certified copy of the decree to be transmitted to the Lower Court.

A copy of the decree, certified by the clerk or proper officer of the Appellate Court, and sealed with the seal of the Court, shall be transmitted to the clerk or proper officer of the Court of original jurisdiction which passed the first decree in the suit appealed from, and shall by him be filed with the original proceedings in the cause; and an entry of the judgment of the Appellate Court shall be made in the original register of the suit.

CCLXX.

How to be executed.

Application for execution of the decree of an Appellate Court shall be made to the Court of original jurisdiction which passed the first decree or order appealed from, and shall be enforced and executed by the Court which passed the first decree or order appealed from, in the manner and according to the rules herein-before contained for the enforcement and execution of original decrees or orders made by such last-mentioned Court.

Appeals from Orders.

CCLXXI.

From what orders appeals shall lie.

Appeals shall lie from the orders of Civil Courts as follows:—

1st. In all cases whatsoever where the order is for the punishment of a contempt committed in the presence of the Court, except when the Court which has passed the order is one of the Courts of original jurisdiction constituted by a Judge or Judges of the High Court.

2d. In all other cases whatsoever, unless otherwise specially provided for, if the decree in the suit be appealable.

3d. In all other cases, unless otherwise specially provided for, whether the decree in the suit be appealable or not, provided that the person against whom the order has been passed is not a party to the suit.

It will be observed that when the decree in the suit is not appealable, there will be no appeal from an order passed against a party to the suit, unless the order be for the punishment of a contempt committed in the presence of the Court.

CCLXXII

Court to which the appeal should be made.

The appeal from an order shall always be made to the Court to which the decree in the suit in which the order may be passed is appealable. If the order be passed in a suit in which the decree is not appealable, or in a judicial proceeding which cannot properly be titled as of any suit, the appeal from the order of a Moonsiff, or Principal Sudder Ameen, shall be made to the Zillah Judge, and the appeal from the order of a Zillah Judge shall be made to the High Court.

CCLXXIII.

The appeal not to stay proceedings.

The appeal shall not in any case stop the proceedings in the Lower Court.

Of Procedure in Appeals from Orders.

CCLXXIV.

Procedure, how it differs from the procedure in appeals from decrees.

The procedure in appeals from orders shall be in all respects the same as in appeals from final decrees, except as herein-after provided.

1. The register shall be kept in the form contained in the Schedule (C.) hereunto annexed.

2. The memorandum of appeal shall in all cases be presented in the Court in which the order objected to was passed, within five days immediately following, and exclusive of the day on which the order was pronounced.

3. Where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, the memorandum of appeal shall be accompanied with a list of the papers or depositions of which the appellant desires that copies should be transmitted to the Appellate Court.

4. The memorandum of appeal shall be transmitted to the Appellate Court within eight days from the date of presentment; and where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, authenticated copies of the order appealed against, and of the papers and depositions mentioned in the list accompanying the memorandum, shall be transmitted to the Appellate Court with the memorandum of appeal.

5. At the expiration of twenty days after the presentment of a memorandum of appeal in a case appealable to the Zillah Court, and thirty days after its presentment in a case appealable to the High Court, from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, and ten days in a case appealable to the High Court from an order of a Court of original jurisdiction constituted by one or more of its own judges, the case shall be set down for hearing in the Appellate Court, and if the Appellant does not appear on any day thereafter that the case may be called on for hearing, it shall be struck out of the file; but the Appellate Court shall have power to restore the case to the file, if sufficient cause to its satisfaction for so doing be shown within a reasonable time.

6. It shall not be necessary for the Appellate Court to call for any further papers, unless it shall think proper.

7. It shall not be necessary to give any notice to the respondent.

8. The judgment may be delivered orally, and reduced to writing in the language of the Court, by an officer of the Court, or otherwise as the Court may think proper in each particular case.

CHAPTER VIII.

Review of Judgment.

CCLXXV.

Any persons considering themselves aggrieved by a decree of any Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a Zillah Judge in appeal, from which no special appeal shall have been admitted by the High Court—or by a decree of the High Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council,—and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them—may apply in person or by attorney or vakeel, for a review of judgment by the Court which passed the decree. The application shall be made within three months from the date of the decree, but the Courts are nevertheless authorized to admit applications for a review after the period above mentioned, provided that the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the Court to which an application for a review may be presented shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if on the contrary it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court to which the application may have been presented shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final.

Cases in which party may apply for a review of judgment.

Within what time the application should be made.

The order of the Court for granting or refusing the review is final.

CCLXXVI.

Provided that if the Court to which the application for a review of its judgment has been presented be the High Court, whenever the judge or judges who may have passed the decree, or if the decree have been passed by two or more judges, when any of such judges, shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering his order or opinion upon the same, it shall not be competent to any other judge or judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the High Court must be made to the judge or judges that passed the decree.

CCLXXVII.

In all cases in which an application for a review of judgment may be granted by any Court, the Court shall give such order, in regard to the summoning of the absent party or parties and hearing of the cause, as it may deem proper in the circumstances of the case.

Whenever a review is granted the parties are to be summoned.

CCLXXVIII.

The Principal Sudder Ameens and Moonsiffs shall at the close of each month send to the Judge of the Zillah a list of the cases in which they may have admitted a review of judgment, with a statement of the grounds on which the review has been admitted, and the Judge shall in like manner, at the close of each month, send to the High Court a list of the cases in which he may have admitted a review of judgment, together with the grounds on which the review has been admitted, and shall at the same time transmit to the High Court any lists which he may have received from the Principal Sudder Ameens and Moonsiffs of cases in which they may have admitted a review of judgment, together with such remarks as he may think proper thereon.

Abstract statements of reviews admitted to be forwarded to Superior Courts.

SCHEDULE A. referred to in the foregoing scheme of Procedure.

Court of the of holden at

Regular or Civil Suits in the year 18 .

Date of Application for Summons.	No. of Suits.	Plaintiff.			Defendant.			Claim.			Day for Parties to appear.	Appearance.		Judgment.			Appeal.		Execution.			
		Name.	Trade or Quality.	Residence.	Name.	Trade or Quality.	Residence.	Particulars.	Amount or Value.	When the Cause of Action accrued.		Plaintiff.	Defendant.	Date.	For whom.	For what Amount.	Date of Appeal.	Judgment in Appeal.	Date of Application.	Date of Order.	Against whom.	For what Amount.

SCHEDULE B. to the foregoing scheme of Procedure.

Hon Court of Madras [Bombay] or Zillah Court at

Register of Appeals from Final Decrees in the year 18 .

Date of Presentation, and when received.	No. of Appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.		
		Name.	Trade or Quality.	Residence.	Name.	Trade or Quality.	Residence.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for Parties to appear.	Appellant.	Respondent.

		Return of Execution.		
and if .	Amount of Costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and Date of every Return.

Judgment.		
nte.	Confirmed, reversed, or altered.	For what, or Amount.

SCHEDULE C. to the foregoing scheme of Procedure.

HIGH COURT of MADRAS [*Bombay*] [or Zillah Court at .]

REGISTER of APPEALS from Orders in the year 18 .

Date of Memorandum.	No. of Appeal.	Name of Appellant.	Name of Respondent.	Order appealed from.		Order in Appeal.
				Of what Court.	Substance of Order.	Confirmed, reversed, or altered.

Criminal Courts of Original Jurisdiction.

I.

The Courts for the trial of offences, other than the High Court, shall be the following:— Criminal Courts other than the High Court.

COURTS OF SESSION;

COURTS OF THE MAGISTRATES;

SUBORDINATE COURTS; viz.:—

Subordinate Criminal Courts of the 1st Class.

Subordinate Criminal Courts of the 2d Class.

II.

The Magistrates of Madras [*Bombay*] shall exercise in Madras [*Bombay*] the same powers as the Magistrates in the Mofussil exercise in the Mofussil. Magistrates of Madras [*Bombay*] and in the Mofussil to have like powers.

First Assistants to the Magistrate, and Principal Sudder Ameens, shall be Judges of Subordinate Criminal Courts of the 1st Class.

Second Assistants to the Magistrate, and Moonsiffs, shall be Judges of Subordinate Criminal Courts of the 2d Class. Who are to be judges of the subordinate Criminal Courts.

III.

The Session Courts, the Courts of the Magistrates, and Subordinate Criminal Courts shall be denominated after the zillah, or city, or division in which they are respectively established. Criminal Courts, how to be denominated.

IV.

The appointment, suspension, and removal of the Judges of the Session Courts, of the Magistrates, and of the Judges of the several Subordinate Criminal Courts, shall be regulated by such rules and orders as the Governor in Council shall, from time to time, pass. Appointment, suspension, and removal of Criminal Judges.

V.

Each Criminal Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:— Declaration on entering upon office.

"I, *A.B.*, appointed of the Court of do
" solemnly declare that I will faithfully perform the duties of my office
" to the best of my ability, knowledge, and judgment."

VI.

Each Criminal Court is to use a seal such as shall be prescribed by the Government. Seal.

VII.

It shall rest with the Governor in Council, upon the report of the High Court, made after such communication with the Session Judges and Magistrates and Judges of the Subordinate Criminal Courts as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to those several Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars Ministerial officers.

as the said Governor in Council may deem proper. Upon the receipt of the instructions of the Governor in Council the Judges of the Criminal Courts shall make the appointments to the several offices of their respective establishments.

VIII.

No person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.

IX.

High Court and Session Court to have jurisdiction over all offences.

The High Court and Session Court shall have jurisdiction in respect of all offences punishable under the Penal Code.

X.

Exclusive jurisdiction as to certain offences.

The High Court and Session Court exclusively shall have jurisdiction in respect of—

1st. Offences entered in Schedule A. of the Code of Procedure as triable by those Courts only.

2d. The offences punishable under Clauses 364, 365, 366, and 390 of the Penal Code, when the value of the property which is the subject of the offence exceeds 500 rupees.

3d. Offences however punishable under any clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise.

4th. Offences however punishable under any clause of the Penal Code, except Clause 149, charged against the following public servants, as such public servants:

Every head ministerial officer, every record keeper, and every Nazir of a Court of Justice, and every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact;

Every head jailer;

Every darogha of police;

Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government; or to investigate, or to report on any matter affecting the pecuniary interests of the Government; or to make, authenticate, or keep any document relating to the pecuniary interests of the Government.

5th. Offences however punishable under any clause of the Penal Code, charged against the following public servants, as such public servants:

Every Juryman;

Every arbitrator to whom any cause has been referred by a Court of Justice.

XI.

Magistrates, their jurisdiction as to offences.

Magistrates are empowered to try all offences not assigned to the exclusive jurisdiction of the High Court or Session Court.

XII.

Subordinate Criminal Courts, their jurisdiction as to offences.

Subordinate Criminal Courts of the first and second classes are empowered to try offences entered in Schedule A. of the Code of Procedure as triable by those Courts respectively.

XIII.

Session Court not to pass sentence in cases punishable with death.

In cases tried by the Courts of Session in which the defendant is convicted of any offence which, by the Penal Code, is punishable with death, the Court shall not pass judgment, but shall refer the case to the High Court, which shall pass judgment thereon.

XIV.

Session Court may direct transfer of a criminal case.

It shall be competent to a Session Judge, on cause shown, to direct the transfer of any criminal case from any Criminal Court to any other Criminal Court of equal or superior jurisdiction in his district.

XV.

Magistrates, their penal jurisdiction.

Magistrates are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding two years, or to fine exceeding 1,000 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

XVI.

Subordinate Criminal Courts, 1st class, their penal jurisdiction.

Judges of the Subordinate Criminal Courts of the 1st Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding one year, or to fine exceeding 200 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

XVII.

Subordinate Criminal Courts, 2d class, their penal jurisdiction.

Judges of the Subordinate Criminal Courts of the 2d Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding three months, or to fine exceeding 50 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

XVIII.

Imprisonment in default of payment of fine.

In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Clauses 51 and 52 of the Penal Code, in awarding the period of imprisonment in default of payment of the fine; provided, however, that in such cases decided by the Magistrate and Subordinate Criminal Courts, the period of imprisonment awarded in default of payment of the fine shall in no case exceed one fourth of the period of imprisonment which such Magistrate or Subordinate Criminal Court is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

XIX.

Subordinate Criminal Courts may be empowered to prepare cases for trial before the Session Court.

It shall be competent to the Government to direct that any Subordinate Criminal Court shall be authorized to hold the preliminary inquiry into cases triable by the Session Courts, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes.

Proposed Code of Procedure for the Courts of Criminal Judicature in Madras and Bombay.

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CHAPTER I.

Preliminary Rules.

I.

No institution stamp fee, or deposit.

No stamp duty or fee shall be required on the institution of any criminal case, or on the entry of any appeal from the decision or order of any Criminal Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Criminal Court, except such fees or charges as may be set forth in tables to be prepared as provided in the next succeeding article.

II.

Table of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Criminal Courts comprised in any zillah by the session judge and magistrate of the zillah, under the direction of the High Court, and for the High Court by the judges thereof. A copy of the table of fees and charges so prepared, which may be applicable to any Criminal Court, shall, after they shall have received the sanction of the Governor in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him than such fees or charges as may be set forth in such table.

III.

All complainants and witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their preferring complaints or giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Complainants and witnesses to be examined without oath, affirmation, or warning.

IV.

No person whatever shall, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure.

No person excepted from Criminal Procedure by reason of place of birth or of descent.

CHAPTER II.

Obtaining a Summons or Warrant.

V.

Where an offence has been committed, or is suspected to have been committed, the proceeding, in order to compel the party known or suspected to have committed such offence to appear for the purpose of preliminary inquiry concerning the same, may be by summons or arrest.

Proceeding to compel appearance.

VI.

The proceeding by summons may be in the cases and shall be subject to the rules herein-after contained.

Summons.

VII.

The proceeding by arrest may be either,—

1. By warrant;
2. Or by a private person without warrant;
3. Or by an officer without warrant.

Arrest.

VIII.

A summons, or a warrant of arrest, may be obtained on such complaint as is mentioned in the next succeeding article.

Complaint.

IX.

Every complaint made before a magistrate or head officer of police, in order to the issuing of a summons or a warrant against a person accused of any offence, either directly or on suspicion, if not written shall be forthwith reduced into writing, and shall be signed by the complainant, and also by the magistrate or head officer of police issuing the summons or warrant.

To be reduced into writing and signed.

By the term "Head Officer of Police" throughout this code of procedure is meant the head officer of a police division, as defined in Article XXVII.

X.

Upon such complaint duly made before a magistrate, he shall, in case it appear to him that there is sufficient ground for proceeding, issue his summons or warrant for causing the person accused to appear before himself or some other magistrate or Court having jurisdiction; and if in the judgment of such magistrate there be no sufficient ground, he shall dismiss the complaint, whether it be direct or on suspicion only.

Magistrate, how to proceed on complaint.

XI.

Upon such complaint duly made before a head officer of police, he shall, in case it appear to him that there is sufficient ground for proceeding, and that the immediate apprehension of the accused is necessary to the ends of justice, issue his summons or warrant for causing the person accused to appear before himself; and if in the judgment of such head officer there be no sufficient ground,

Head officer of police how to proceed on complaint.

or the immediate apprehension of the accused is not necessary to the ends of justice, he shall abstain from issuing any process, and shall submit the complaint for the orders of the magistrate.

XII.

Summons, what it is to contain, and how to be directed.

Every summons issued by a magistrate or head officer of police to a person so accused shall be in writing, under the hand and seal of the magistrate or head officer of police issuing it; shall show his office; that the summons is made on a complaint duly made of an offence committed, or suspected to have been committed; shall be directed either to the person accused by such complaint, or some other person; if directed to the person accused it shall, if issued by the magistrate, direct him to appear before the magistrate issuing such summons, or some other magistrate or Court as aforesaid, at a time and place specified; and if issued by a head officer of police, to appear before such head officer at a time and place specified; and if directed to any other person it shall require such other person to summon the person accused so to appear.

XIII.

Summons, how to be served.

If such summons be directed to the person accused, it may either be served on him personally or left with some adult member of his family.

XIV.

Notwithstanding summons, warrant may issue in certain cases.

A magistrate or head officer of police may, notwithstanding such summons, either before the appearance of the person accused, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person in all cases in which he might so have done had no such summons been issued.

XV.

Warrant when grantable for an offence committed beyond local jurisdiction.

A magistrate of one district or head officer of one division may grant a warrant for the apprehension of a suspected offender within that district or division, as the case may be, in respect of an offence of which the law takes cognizance, committed in a different district or division, or on the high seas, or in a foreign country.

XVI.

Where an offence may be investigated and tried in one of two or more jurisdictions.

When a person or several persons shall be accused of the commission of any offence, by reason of any things which have been done, or by reason of any thing or things which have been done and consequence or consequences which have occurred, every such offence may be inquired of and determined, and every such offender prosecuted and punished, in any district or jurisdiction in which any such thing shall have been done, or any such consequence shall have occurred.

XVII.

Abetment.

The previous abetment of an offence, wherever such abetment may have taken place, may be inquired of and determined in any place or district in which that offence may be inquired of and determined, and by any Court which has jurisdiction to try that offence, as though the previous abetment had been committed at the same place at which that offence was wholly or partly committed.

XVIII.

Abetment.

Provided, that such abetment may be inquired of and determined in any district within which the abettor has done anything for abetting the commission of that offence.

XIX.

Offence committed on boundary.

Where any offence shall be committed on the boundary or boundaries of two or more districts or divisions, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or division and completed in another, every such offence may be inquired of and determined in any of the said districts or divisions in the same manner as if it had been actually and wholly committed therein.

XX.

During journey, &c.

Where any offence shall be committed on any person or on or in respect of any property in or upon any coach, cart, or other carriage, or upon any beast of

burden employed in any journey, or shall be committed on any person or on or in respect of any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be inquired of and determined in any district or division through any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had been actually committed in such district or division; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two districts or divisions, such offence may be inquired of and determined in either of the said districts or divisions through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually been committed in such district or division.

XXI.

Receiving, &c. stolen property.

Whosoever shall fraudulently receive, or fraudulently have in possession, any stolen property, knowing the same to be stolen property, may be prosecuted and punished in any district or place in which he shall have or shall have had such stolen property in his possession, or in any district or place in which any person by whose offence that property came to be stolen property may be prosecuted and punished.

XXII.

Unlawfully receiving property.

Whosoever shall commit any offence by unlawfully receiving or having in possession any moveable property, knowing the same to have been unlawfully taken, obtained, or converted, may be prosecuted and punished in any district or place in which he shall have or shall have had such property in his possession, or in any district or place in which any person who unlawfully took, or obtained, or converted such property, may be prosecuted and punished for any offence committed thereby.

XXIII.

Escape from lawful custody under sentence.

Any offender who shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice, or by virtue of a commutation of such sentence, may be prosecuted and punished either in the district where he shall be apprehended and retaken, or in the district in which the said offence shall have been committed.

XXIV.

Returning from transportation or banishment.

Any offender who shall return from transportation or banishment, the term of such transportation or banishment not having expired, and his punishment not having been remitted, may be prosecuted and punished either in the district or place where he shall be apprehended, or in that in which he was formerly tried.

XXV.

Forgery.

Any person who shall commit any offence by forgery, or by using as genuine any document which he knows to be forged or falsified by forgery, may be prosecuted and punished in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place.

XXVI.

Definition of certain terms.

In the preceding articles, and any other article of this Act, wherever the district or other place or the Court in or before which any offence is to be inquired of and determined, or any offence is to be prosecuted and punished, is mentioned, the term "inquired of" shall be deemed to comprise every proceeding preliminary to trial; the term "determined," to comprise trial, and every subsequent proceeding, including the punishment of the offender; and the terms "prosecuted and punished," to comprise every proceeding, whether preliminary or subsequent to trial, or upon such trial; unless in any such case there be something in the subject or context repugnant thereto.

XXVII.

What is a district, and what a division.

The local jurisdiction of the magistrate of a zillah or district shall for the purposes of this Act be deemed a district; and the local jurisdiction of a moonsiff or head officer of police be deemed a division; provided that nothing herein contained shall be held as authorizing a police officer, except under the special authority of the magistrate, to inquire into any of the offences described in the provisions of the Penal Code specified in Article LXXXII.

We have allowed this article, which serves the purpose of an interpretation clause of terms of frequent occurrence in the code, to stand as in our first report. The extent of territory under the jurisdiction of a magistrate is in Bengal usually termed a district, that under a darogha or moonsiff a division. It is different in Madras and Bombay. In those presidencies the portion of country under a tahsildar or moonsiff is termed a district. We think it will be found expedient to use the terms uniformly throughout the presidencies.

XXVIII.

Madras [*Bombay*] a district.

The local jurisdiction of the magistrates of Madras [*Bombay*] shall for the purposes of this Act be deemed a district.

CHAPTER III.

Of the Warrant and its Execution.

XXIX.

Warrant to bear the name of grantor.

The warrant shall be in the name of the officer who grants it.

XXX.

Form of warrant.

Every such warrant shall be in writing; shall be directed to some person or persons by name or by official description (and in the latter case, either to some particular officer, or to all or some one or more of that class or description); shall specify the person to be arrested by name or by such other description as may be sufficient to distinguish him; shall order that such person be arrested; shall specify the authority before whom such person after arrest shall be taken; shall state, as the cause of arrest, some offence committed or suspected to have been committed in respect of which the magistrate or other officer has jurisdiction to issue such warrant; shall show the person who grants it to be a magistrate or other officer authorized to issue such warrant; shall state the time of making it; show the place where it is granted, either by statement in the body or in the margin of the warrant; and be signed and sealed by the magistrate or other officer who grants it.

XXXI.

Warrant to several persons, jointly and severally.

A warrant directed to several persons jointly and severally may be executed by any one of them.

XXXII.

To several persons jointly.

A warrant directed to several persons jointly, without words excluding the execution by one or a part only of those mentioned, may be executed by any one or by a part only of them.

XXXIII.

To a head officer of police or Nazir.

A warrant directed to a head officer of police or to a nazir may be executed by any officer subordinate to such head officer or nazir respectively.

XXXIV.

Officers issuing a warrant may personally superintend its execution.

A magistrate or other officer authorized to issue a warrant or other criminal process may attend personally for the purpose of seeing that the same be duly executed, and may adopt or direct any legal measures that may be necessary for the due execution thereof.

XXXV.

Warrant directed to a person not an

A warrant directed to any other person than an officer of police or the nazir of a Court is to be executed by that person; provided nevertheless,

that any other person may, in the presence or out of the actual presence of one authorized to execute a warrant, aid him in executing the same, if the person so authorized be near at hand and acting in the execution of the warrant. officer of police or nazir.

XXXVI.

Every person is bound to assist a magistrate or police officer demanding his aid in the taking of an offender, preventing a breach of the peace, the suppression of a riot, or the taking of the rioters. All persons bound to assist in certain cases.

XXXVII.

A warrant issued by any magistrate must be executed (unless it be specially otherwise provided) within the jurisdiction of the magistrate from whom it issued, or of the magistrate by whom it has been duly indorsed for execution. Where a warrant of a magistrate must be executed.

XXXVIII.

In case any person against whom a warrant shall be issued by any magistrate shall escape, go into, reside, or be, or be supposed to be, in any place out of the jurisdiction of the magistrate granting such warrant, the magistrate of the place into or in which such person shall escape, go, reside, be, or be supposed to be, shall indorse his name on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant within the jurisdiction of the magistrate who indorsed such warrant, and to apprehend and carry such person before the magistrate who indorsed such warrant, or before the magistrate of the district where the offence was committed. In case such person be carried before the magistrate who indorsed the warrant, and the offence with which he is charged is bailable in law, he shall be proceeded with in the manner herein-after mentioned in Article CXXI. or Article CLXXXII. If the offence be not bailable, he shall be forwarded to the magistrate of the district in which such offence was committed. Warrant indorsed in another jurisdiction.

XXXIX.

Provided that it shall be competent to a magistrate issuing a warrant for the arrest of a person out of his jurisdiction to direct the warrant to the magistrate of the district in which such person is, or is supposed to be, and to transmit the same by post. On the receipt of the warrant by the magistrate to whom it is directed, he shall indorse his name on such warrant, and enforce its execution in the same manner as if the warrant had originally issued from himself. On such person being apprehended, and carried before the magistrate who indorsed the warrant, he shall be dealt with as provided in the last preceding article. Warrant to be indorsed may be sent by post.

XL.

If a person for whose apprehension a warrant has been granted by a magistrate under the provisions of Article XV. is suspected of an offence committed in a different district, the magistrate granting the warrant shall, unless he is authorized by any law to complete the inquiry himself, send the person arrested to the magistrate of the district in which the offence was committed, or take bail for his appearance before such magistrate if the offence of which he is suspected is bailable in law; and in all other instances the magistrate shall report the case for the orders of the High Court. Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

XLI.

If the warrant under Article XV. shall have been granted by a head officer of police, the head officer of police shall send the person arrested to the magistrate, to whom such head officer of police is subordinate, unless the offence of which the person arrested is suspected shall have been committed in another division of the district in which the division of the head officer of police who granted the warrant is comprised; in such case the head officer of police who granted the warrant shall send the person arrested to the head officer of police of the division in which such offence was committed. Head officer of police how to proceed in such cases.

XLII.

A warrant issued by a police officer must be executed (unless it be otherwise specially provided) within the jurisdiction of the officer who issued it. Where a warrant of a police officer must be executed.

XLIII.

When a warrant of arrest may be executed.

An arrest on a warrant for any of the offences specified in Schedule A. of this Code of Procedure as not bailable offences may be made on any day, and at any time of the day or night. It shall be at the discretion of the magistrate to direct that an arrest on a warrant in any other case may be made on any day, and at any time of the day or night.

XLIV.

Warrant, how to be executed.

In making an arrest the officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by words or actions.

XLV.

No unnecessary restraint.

After arrest the prisoner shall not be subjected to any more restraint than such as may be necessary to prevent his escape,

XLVI.

Notification of purpose to act under the warrant.

One executing or attempting to execute a warrant of arrest is bound to notify to the person against whom such warrant is directed, that he purposes to act under the authority of that warrant.

XLVII.

Notification of substance of warrant.

An officer or other person executing a warrant of arrest must notify the substance of the warrant, and show the warrant, if sight of it be demanded.

XLVIII.

Taking and refusing to give up a warrant.

If on a warrant being shown any person take hold of it, and illegally refuse to give it up to the officer or other person authorized to execute it, such officer or other person may retake it by force, provided he use no greater degree of violence than is necessary for the purpose.

XLIX.

Resisting an endeavour to arrest.

If, after notice by one authorized by warrant to arrest another of his intention to arrest him, the person against whom such warrant is issued shall forcibly resist the endeavour to arrest him, the person so authorized is bound to use all such means as may be necessary to effect an arrest and prevent escape.

L.

Breaking of outer door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any outer door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LI.

Officer, &c. breaking out to liberate himself.

An officer or other person having lawfully entered a dwelling house for the purpose of executing criminal process, or of arresting any person under any of these articles, may lawfully break out of such house when it is necessary for his own liberation; and any officer may lawfully break any outer or inner door or window of a dwelling house in order to liberate any officer or other person who, having entered for such purpose, is unlawfully detained within such dwelling house.

LII.

Breaking of inner door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LIII.

If information be received that a person accused of any offence for which a warrant may issue on complaint, has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused, and shall endeavour to ascertain, by the means of two respectable women unconnected with the family or with each other, whether the person against whom the warrant has been issued be really concealed in the zenanah; in which case, and if such person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, in the presence of two or more respectable residents of the place, break open the zenanah, and execute the process intrusted to him, giving notice at the same time to any women in the zenanah that they are at liberty to withdraw.

Breaking open a *zenanah* or female apartment.

LIV.

It shall be at the discretion of the magistrate to direct, in any particular case, that a warrant of arrest shall be executed as provided in Articles L., LII., and LIII., for any other offence than the offences for which a warrant may issue on complaint.

Breaking of doors, &c. for offences not previously provided for.

LV.

After arrest made, the officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested to the magistrate or other authority mentioned in the warrant.

Party arrested to be brought immediately to the authority mentioned in the warrant,

LVI.

If, after arrest made, circumstances render it impracticable to bring the person arrested immediately before the magistrate, the officer or other person executing the warrant shall detain the person arrested in custody in the meantime, and bring him before the magistrate as soon as his doing so shall become reasonably practicable.

or as soon as practicable.

LVII.

No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence; and no such officer or other person shall after such arrest prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

No threat, promise, or caution, as to disclosure by party arrested.

CHAPTER IV.

Of Arrest without Warrant.

LVIII.

A police officer or other person who sees any offence committed for which a warrant may issue on complaint, may, without warrant, arrest the offender.

Arrest on view.

LIX.

A police officer may, without warrant, arrest of his own authority a person against whom a reasonable complaint of an offence for which a warrant may issue on complaint is made, or who may be found with stolen goods in his possession.

On complaint, or finding with stolen goods.

LX.

A police officer, or other person, may, without warrant, arrest a proclaimed offender, or a person against whom a hue and cry has been raised of his having been concerned in a recent offence.

A proclamed offender: hue and cry.

LXI.

A party liable to *arrest concealing himself.*

If a person liable to arrest without warrant under the foregoing rules, shall *enter into and conceal himself in a dwelling* house, the person who might otherwise *have arrested shall take such precautions* as may be necessary to prevent *the escape of the accused, and send immediate information to the magistrate or head officer of police; but no house* shall be broken into for the purpose of *arresting any* person without a warrant.

LXII.

Breach of the peace.

A police officer may, of his own authority, interpose for the prevention of a breach of the peace committed or attempted to be committed in his view; and in the event of disobedience or resistance may, without warrant, arrest the offender.

LXIII.

Obstruction of a police officer in his duty.

A police officer may apprehend any person who obstructs him while in the execution of his duty, and carry him before the magistrate, or before the head officer of the police division.

LXIV.

When it is not necessary to notify cause of arrest.

It is not necessary to notify the cause of arrest where the person is in the actual commission of any offence, or where fresh pursuit is made after any such person, who, being disturbed, makes his escape.

LXV.

Party arrested to be taken immediately before the proper authority.

A police officer or other person, having arrested a person for an offence, is to take or send him before the magistrate or the head officer of the police division, without unnecessary delay.

LXVI.

Arrest for an offence commited in the presence of a magistrate.

Where any offence is committed in the presence of any magistrate, he may by word of mouth command any other person to arrest the offender, and may thereupon commit him, or, at his discretion, where the offence is bailable, may admit him to bail.

CHAPTER V.

Of Escape and Re-taking.

LXVII.

Person arresting may retake on escape, and deal with the party arrested as on original taking.

If a person lawfully arrested on a criminal information shall escape or be rescued, it shall be lawful for the person from whose custody such prisoner so escaped or was rescued to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and on any day, and at any time of the day or night, and to deal with him as he might have done on an original taking.

LXVIII.

May adopt the same measures as on original taking.

In order to retake any person, within the meaning of the last preceding article, the person so making fresh pursuit as therein is mentioned may adopt the same measures as he might have done on the original taking.

CHAPTER VI.

Of Search Warrant.

LXIX.

When grantable by a magistrate.

Whenever a magistrate, having jurisdiction in respect of a supposed offence, shall consider that the production of any thing or things will be essential to the conduct of an inquiry into such offence, he may grant his warrant to search

for such thing or things, and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in any dwelling or dwellings, place or places. In such case the magistrate shall, if he think right, specify in his warrant the dwelling or dwellings, place or places, or part or parts thereof, to which only the search shall extend.

LXX.

How to be directed.

The magistrate shall direct his warrant to the head officer of police within whose jurisdiction the dwelling or dwellings, place or places, required to be searched, are situated, or to any other public and registered officer of police to whom the magistrate may think fit to commit the execution of that duty. A warrant directed to a head officer of police may, in the event of the head officer not being able to proceed in person, be executed by any officer subordinate to such head officer, above the rank of peon.

LXXI.

When a magistrate may require a magistrate of another district to issue a search warrant.

A magistrate may require the magistrate of another district to issue a search warrant in any case in which he may issue such warrant himself.

LXXII.

When a magistrate may grant a search warrant out of his jurisdiction.

In cases of emergency, a magistrate may grant his warrant for the search of any thing or things concealed, or supposed to be concealed, in a dwelling or dwellings, place or places, out of his jurisdiction, the production of such thing or things being essential to the conduct of an inquiry into an offence committed within his jurisdiction. When a magistrate grants a warrant under this article, he shall inform the magistrate of the district in which the dwelling or dwellings, place or places, to be searched, are situated.

LXXIII.

Search warrant when grantable by a head officer of police.

Whenever a head officer of police shall consider that the production of any thing or things will be essential to the conduct of an inquiry into any offence which he is authorized to inquire into, he may grant his warrant to search for such thing or things in any dwelling or dwellings, place or places, within his division, which shall be specified in his warrant; and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in such dwelling or dwellings, place or places.

LXXIV.

How to be executed.

The head officer of police shall, if practicable, conduct the search in person; but if unable to proceed in person, shall direct his warrant to any police officer of his division above the rank of peon.

LXXV.

When a head officer of police may require a head officer of police of another division to issue a search warrant.

A head officer of police of one division may require the head officer of police of another division, whether subject to the same magistrate as himself or to the magistrate of any other district, to issue a search warrant in any case in which he may issue such warrant himself.

LXXVI.

Representations regarding anything for which search is to be made to be sent to magistrate.

The head officer of police, when not specially instructed by the magistrate, shall transmit all representations made to him regarding the receipt or concealment of any thing or things the production of which is essential to the conduct of an inquiry into an offence, at or before the time when he proceeds to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject.

LXXVII.

When the search is to be made.

The search shall be made in the daytime, except in cases of great emergency, and where the information is positive, and not on suspicion only, when it may be made either in the daytime, or in the night-time.

LXXVIII.

Breaking of door.

If the door be shut, the person charged with the execution of the warrant may proceed to break open the door, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LXXIX.

Breaking of a zenanah or female apartment.

If the place ordered to be searched is a zenanah or female apartment in the actual occupancy of women, the officer charged with the execution of the warrant shall give notice to any women in the zenanah that they are at liberty to withdraw; and, after giving such notice, and allowing a reasonable time for the women to withdraw, such officer may enter the zenanah for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

LXXX.

Search to be made in the presence of witnesses. Occupant of the place searched may attend.

The search is to be made in the presence of three or more respectable inhabitants of the place in which the dwelling or dwellings, place or places searched, may be situated, and such persons shall subscribe their names to the report made to the magistrate; and the occupant of the house, or owner of the house, or some person in his behalf, shall in every instance be permitted to attend during the search.

LXXXI.

Property, &c. to be sent to the magistrate.

All property which is claimed as having been stolen, as well as all property suspected to have been stolen, found on persons accused of robbery or theft, or which is seized by police officers under suspicious circumstances, as also anything the production of which is essential to the conduct of an inquiry into an offence, shall be forwarded without delay, together with a despatch, to the magistrate. A copy of the despatch being registered, the original is to be given to the officer charged with the conveyance of the property, to be delivered to the nazir, or other proper officer, on his arrival at the station of the magistrate.

CHAPTER VII.

Preliminary Inquiry by the Police.

LXXXII.

Offences into which the police officers may not inquire without special authority.

A head officer of police shall not inquire into any of the following offences punishable under the Penal Code, unless specially authorized by the magistrate to do so, viz.:—

Offences under Chap. VIII., provided that it shall be competent to a darogha to apprehend and send to the magistrate any person who may be found in his division in the commission of the offence punishable under clause 150.

Offences under Chap. IX., except the offences punishable under clauses 164, 166, 168, 171, 173, 175, and 182; provided that it shall be competent to a darogha to inquire into any offence under Chap. IX., committed in contempt of his own authority.

Offences under Chap. X., except the offences punishable under clauses 201, 203, 204, and 205.

Offences under Chap. XI., clauses 211, 216, 225, 226, 227, and 228.

Offences under Chap. XIII.

Offences under Chap. XIV., except the offences punishable under clauses 257, 265, 267, 269, 270, and 273.

Offences under Chap. XV.

Offences under Chap. XVI.

Offences under Chap. XVII.

Offences under Chap. XVIII., clauses 312, 313, 318, 325, 332, 333, 334, 335, 336, 337, 342, 347, 348, 350, 351, 352, and 358.

Offences under Chap. XIX., clauses 369, 370, 373, 374, 384, 385, 387, 388, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, and 425.
Offences under Chap. XX., clauses 453 and 454.
Offences under Chap. XXI.
Offences under Chap. XXII.
Offences under Chap. XXIII.
Offences under Chap. XXIV.
Offences under Chap. XXV.
Offences under Chap. XXVI.

LXXXIII.

When the head officer of police may issue his warrant.

Upon complaint duly made before a head officer of police having jurisdiction in the case, against any person for committing any offence, other than the offences described in the provisions of the Penal Code specified in the last preceding article, and which offence is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such head officer to issue his warrant to apprehend such person, and to cause him to be brought before such head officer.

LXXXIV.

May issue summons instead of warrant.

Provided, that in all cases it shall be lawful for such head officer before whom such a complaint is made, instead of issuing his warrant in the first instance to apprehend the person so complained against, to issue his summons, recording his reason for so issuing his summons, directed to such person, requiring him to appear before such head officer.

LXXXV.

When head officer of police shall issue summons.

Upon a complaint duly made before a head officer of police having jurisdiction in the case, against any person for committing any offence into which he is authorized to inquire, and which is punishable with imprisonment for a period not exceeding six months, such head officer shall issue his summons to such person, requiring him to appear before such head officer.

LXXXVI.

When the head officer of police may stay issue of process.

In the event of its appearing to the head officer of police that for any special reason the issue of process for causing the attendance of the accused should be stayed until the case be reported for the orders of the magistrate, such report shall be made without delay, and the issue of process against the accused in the meantime suspended. On the receipt of the head officer's report, it shall be at the discretion of the magistrate, if he is of opinion that there are grounds for proceeding with the case, to direct the head officer to proceed with it, or to proceed with it as if the complaint had been made before himself.

LXXXVII.

Witnesses to be summoned.

Upon the issue of process for causing the attendance of the accused, the head officer of police shall at the same time issue summonses for the attendance of any persons who appear from the statement of the person making the complaint to be acquainted with the facts and circumstances of the case.

LXXXVIII.

Head officer of police may proceed in person, or depute an officer to investigate.

Nothing contained in the foregoing articles shall be construed to prevent a head officer of police from proceeding in person, or deputing a fit person from among the officers acting under him, to ascertain on the spot the facts and circumstances of any case into which he is authorized to inquire.

LXXXIX.

Police may pursue offenders into other jurisdictions.

It shall be lawful for the head or other officer of police to pursue persons accused of the offences referred to in Article LXXXIII. into the jurisdiction of other head officers of police whether subject to the same magistrate as himself or to the magistrate of any other district.

XC.

Examination of witnesses.

The examination of witnesses by the police shall be taken in the presence of the head officer, or, in the event of his absence, in the presence of any officer above the rank of peon, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be signed by the person deposing, and transmitted to the magistrate, as herein-after provided, under the signature of the police officer by whom the inquiry may have been made.

XCI.

Police officers not to examine the accused.

It shall not be competent to a head or other officer of police to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make.

XCII.

Inquiry by the police.

The head or other officer of police shall complete the inquiry with as little delay as possible, and if the head officer himself have made the inquiry, he shall forward the accused to the magistrate, under the custody of one or more peons, provided the evidence is such as to warrant that course, and the offence be not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the magistrate of the district. If a subordinate police officer have made the inquiry, he shall submit his procedings to the head officer, who shall then proceed as if he had made the inquiry himself.

XCIII.

Accused not to be detained by the police beyond 48 hours, without special authority.

Provided, that it shall not be lawful for the head or other officer of police to detain the accused in custody, without the special orders of the magistrate, for a longer period than forty-eight hours; and provided also, that it shall be competent for a head or other officer of police, on his being satisfied that there are grounds for believing that the accusation is well founded, to forward the accused to the magistrate at any period of the inquiry before the expiration of forty-eight hours from the apprehension of the accused. The head officer shall forward with the accused a short despatch stating the offence for which the accused has been arrested.

XCIV.

Head officer how to proceed in cases of deficient evidence.

If it shall appear to the head officer of police that there is not sufficient evidence to warrant the transmission of the accused to the magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and submit his proceedings for the orders of the magistrate.

XCV.

Proceedings of the head officer, of what to consist.

In all cases, in submitting his proceedings to the magistrate, the head officer of police shall forward the statement of the person complaining and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the magistrate. The head officer shall further state whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance.

XCVI.

Bail.

Persons accused of the commission of any of the offences entered in the third column of Schedule A. as not bailable, shall not be admitted to bail, provided that there appear reasonable grounds for believing that such persons have been guilty of the offence imputed to them; but in all cases of persons accused of any other offences, if sufficient bail be tendered for appearance before the magistrate, the head officer of police shall accept such bail, and immediately release the party apprehended.

XCVII.

When security for keeping the peace to be required.

In cases of manifest necessity, when the head officer of police may be apprehensive of danger to the public peace by the enlargement of a person arrested for rioting or other bailable offence, without security being taken for his peaceable conduct, the person so arrested shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace; and the surety or sureties shall execute a recognizance in an amount to be regulated by the circumstances of the case and the condition of the person executing the same. In default of his furnishing the required security, the accused shall be forwarded under custody to the magistrate.

XCVIII.

Police to report all apprehensions.

The officers of police shall report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of the magistrate.

XCIX.

Bail not to be excessive. Terms of security.

The bail to be taken for appearance before the magistrate, in pursuance of Article XCVI. shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the defendant before the magistrate on or before a fixed day, to answer the complaint.

C.

Prosecutors and witnesses to execute recognizance to appear before the magistrate.

Prosecutors and witnesses, whose attendance may be necessary at the Criminal Courts, shall execute recognizances before the police officers, to appear before the magistrate on a specific day, which shall be the day whereon the accused may be bound to appear, if he shall have been admitted to bail, or on the day on which he may be expected to arrive at the magistrate's place of residence, if he is to be forwarded thither under custody. The police officer in whose presence the recognizance may be executed shall forward it with his report to the magistrate, and shall deliver to the prosecutor or witness a despatch, which the prosecutor or witness shall be required to deliver in person to the magistrate or the nâzir of his court, unaccompanied by any officer of police.

CI.

Witnesses not to be subjected to restraint. Recusant witness may be forwarded in custody.

The police officers shall not subject witnesses to any restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any witness shall refuse to attend, or to execute the recognizance directed in the last preceding article, it shall be competent to the head officer of police to forward such witness under custody to the magistrate.

CII.

By whom the powers of the head officer of police may be exercised in his absence or illness.

The powers to be exercised by the head officer of police under the foregoing rules shall be exercised, in the event of his absence or illness, by the head police officer present at the police station above the rank of peon.

CIII.

Service of process issued by the police.

All processes in criminal cases cognizable by the police officers shall be served by the peons at the police station, without any charge to the parties or witnesses.

CIV.

Penalty for taking unauthorized cognizance of offences. Magistrate may direct investigation at his discretion.

The police officers are strictly prohibited, on pain of dismissal from office, from taking cognizance of any of the offences described in the provisions of the Penal Code specified in Article LXXXII., except under the special orders of the magistrate. But it shall be at the discretion of the magistrate to issue such orders to the officers of police, in regard to the investigation of criminal cases, as he shall think proper, and such officer shall be bound to obey the orders of the magistrate.

CV.

How head officer of police is to proceed in regard to cases triable by the Subordinate Criminal Courts.

When a Subordinate Criminal Court has been authorized to receive cases coming within its jurisdiction on the report of a police officer, the head officer of police shall forward the accused and submit his proceedings to such court, and shall bind over the prosecutor and witnesses to appear before the same.

CVI.

Rules relating to the police not to apply to Calcutta.

The foregoing rules, from Article LXXXII. inclusive, shall not be held to apply to the town of Madras [*town and island of Bombay*].

CHAPTER VIII.

Of Contempts and Disobedience of Orders.

CVII.

Disobedience of orders, &c. under Clause 149 of the Penal Code, how punishable.

Any Judge, or Court of Justice, or Magistrate shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their offices, and to punish the persons committing them as therein authorized.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.

CVIII.

Contempt of Court under Clause 197.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

The offence is that of insulting or interrupting a Court of Justice.

CIX.

Contempt of lawful authority under Chapter IX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants." The rules of this Chapter of the Code of Procedure are confined to Judges, Courts of Justice, and Magistrates; the provisions of Clause 149 and of Chapter IX. of the Penal Code are more general; but it has been considered expedient to leave to the Government of India the extension of these or similar rules to other public servants.

CX.

Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the offender.

Provided that no Magistrate or Judge of a Subordinate Criminal Court shall exceed his ordinary powers of punishment in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that where a person has been sentenced to punishment under the provisions of the last preceding article, for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge, Court of Justice, or Magistrate, to remit the punishment, on the submission of the offender to the order or requisition of such Judge, Court of Justice, or Magistrate.

CHAPTER IX.

Criminal Charges by the Advocate General.

CXI.

It shall be competent to the Advocate General, at his discretion, to file a criminal charge for any offence, in any criminal court; also to withdraw such charge, and to file another.

Advocate General may file criminal charges.

CXII.

The rules relating to the description of the offence in the case of charges by the Magistrate shall be applicable to criminal charges filed by the Advocate General.

To follow the rules relating to charges.

CHAPTER X.

Prosecutions in certain Cases.

CXIII.

Charges of offences punishable under Chapters V., VI., XI., and XVI. of the Penal Code shall not be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Governor General in Council, or by order of, or under authority from, a public officer empowered by the Governor General in Council to direct or authorize such prosecution, or unless instituted by the Advocate General.

Prosecutions for certain offences not to be instituted but under authority of Government, or of a duly empowered officer.

The offences are as follow:—

Chapter V. Offences against the state;
„ VI. Offences relating to the army and navy;
„ XI. Offences relating to the revenue;
„ XVI. Illegal entrance and residence into the territories of the East India Company.

CXIV.

In cases of contempt of the lawful authority of public servants, and other offences against public servants, as such, described in Chapter IX. of the Penal Code, except the offence described in Clause 186, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the public servants concerned, except when they are inferior ministerial servants, in which case the prosecution shall not be instituted but with the sanction of their official superiors.

Prosecution for certain offences under Chapter IX. of the Penal Code not to be instituted but with the sanction of the public servants concerned.

CXV.

In cases of offences against public justice, described in Clauses 190, 191, 192, 193, 194, 195, 196, and 197 of Chapter X. of the Penal Code, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the Court of Justice, Judge, or Magistrate, before which or whom, or against which or whom, such offence was committed.

For certain offences under Chapter X. of the Penal Code, but with the sanction of the authority before which the the offence was committed.

CXVI.

When a Court of Justice, Judge, or Magistrate is of opinion that there is sufficient ground for bringing any person to trial on a charge of any of the offences referred to in the last two preceding articles, the Court, or Judge, or Magistrate, after making such preliminary inquiry as may be necessary, may send the case for investigation to the Magistrate, who shall proceed to inquire into the case, and pass such orders thereon as he may deem proper: Provided, that it shall be competent to the High Court or a Court of Session to charge a person for any such offence committed before it, or under its own cognizance, and to try such person upon its own charge.

Mode of proceeding in cases mentioned in the two last preceding articles.

CHAPTER XI.

Of preliminary Inquiry by the Magistrate in Cases triable by the High Court or Session Court.

Complaint and issuing of Process for causing the Attendance of the Accused.

CXVII.

Magistrate may issue his warrant.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any of the offences specified in Schedule A. as triable exclusively by the High Court or Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or Court of Session, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint; provided also, that in any case which is triable exclusively by the High Court or Court of Session under the provisions of Clauses 3, 4, and 5 of Article X. of the rules relating to the "Criminal Courts of Original Jurisdiction," the magistrate shall proceed in the same manner as if the case had been triable by himself.

May issue a summons instead of a warrant.

In what cases he is to proceed as if the case had been triable by himself.

CXVIII.

Postponement of issue of process.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CXVII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

May dismiss the complaint.

CXIX.

Magistrate may direct bail to be taken.

It shall be at the discretion of the magistrate in issuing his warrant for the arrest of any party against whom a complaint has been made, to direct that if such party be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the party from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CXX.

Magistrate may dispense with the personal attendance of the accused.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CXXI.

Arrest on warrant indorsed by a magistrate of another district.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

CXXII.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the magistrate shall, on proof thereof, cause a written proclamation, requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this Article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Proclamation for an absconding party.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CXXIII.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons, under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CXXIV.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such persons before him to testify as aforesaid; and, if necessary, such warrant may be backed by the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

If he do not obey the summons, then warrant.

CXXV.

If the magistrate shall be satified by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

In what cases warrant in the first instance.

CXXVI.

If any person so summoned or brought before a magistrate shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Refusing to answer, may be committed to custody.

Examination of Parties and Evidence.

CXXVII.

Examination of the complainant and witnesses for the prosecution.

When a case is brought before a magistrate in which a person is charged with an offence which is triable exclusively by the High Court or Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or Court of Session, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall present the magistrate from examining the defendant at any stage of the inquiry, as provided in Article CXXXII.

CXXVIII.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXXIX.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXXX.

Magistrate not to receive any written admission or confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the head, or other officer of police, and by him reduced into writing.

CXXXI.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant.

CXXXII.

Examination of defendant.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the defendant either discharged or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be.

CXXXIII.

Magistrate how to proceed in case of confession.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

CXXXIV.

No influence to be used to induce disclosures.

No influence, by means of any promise or threat, shall be used to any defendant under examination to induce him to disclose or withhold any matter within his knowledge.

CXXXV.

The examination of the defendant, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing as he gives it, at the foot of the examination, and whether the defendant signs it or not the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement. No other attestation shall be necessary to render the examination available as evidence at the trial of the defendant, and such attestation shall be admitted without proof of the signature to it, unless the trying Court shall see reason to doubt its genuineness.

Examination of the defendant, how to be recorded.

Examination to be admitted as evidence on the attestation of the magistrate.

CXXXVI.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

Defendant may be detained for any offence committed by him.

CXXXVII.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Any person attending may be detained for any offence committed by him.

CXXXVIII.

It shall be at the discretion of the magistrate to summon and examine any evidence that may be offered in behalf of the defendant to answer or disprove the evidence against him.

Discretionary with the magistrate to take evidence for the defence.

CXXXIX.

The provisions of Articles CXXIV., CXXV., CXXVI., and CXXIX. shall be applicable to witnesses named in support of the defence.

Witnesses for the defence.

Conditional Pardon.

CXL.

In cases of murder, dakoity, robbery, thuggee, offences relating to coin, and forgery, as well as in cases of housebreaking and theft, attended with circumstances of aggravation, it shall be lawful for the magistrate, recording his reasons for the same, to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery and theft) the mode in which the stolen property may have been disposed of.

Magistrate may tender a pardon in certain cases.

CXLI.

It shall be competent to the High Court as a Court of original jurisdiction, to the Session Court, or to the Hight Court as a Court of reference, to direct the commitment of any person to whom a pardon may have been offered under the provisions of the last preceding article, should it appear that such person has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information.

When High Court or Session Court may direct the commitment of a person to whom a pardon may have been tendered.

CXLII.

In like manner it shall be competent to the High Court as a Court of original jurisdiction, or to a Session Court, at the time of trial, and also to the High

When High Court or Session Court

may direct a tender of pardon.

Court as a Court of reference, to instruct the magistrate to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, with the view of obtaining his or their evidence on the trial.

CXLIII.

High Court may revise proceedings when a pardon may have been tendered.

It shall be competent to the High Court to revise the proceedings of the magistrates, in any case in which a pardon may have been tendered to any person, and to annul the orders passed on such proceedings, should it appear to the High Court that a pardon had been granted on insufficient grounds.

Bail.

CXLIV.

Bail not to be taken for certain offences if proof of guilt.

When may be taken.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as not bailable in Schedule A. of this Code of Procedure, such person shall not be admitted to bail, provided that there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the magistrate, not be such as to raise a strong presumption of the guilt of the person accused and to require his committal, or such evidence shall be adduced on behalf of the person accused as shall, in the opinion of the magistrate, weaken the presumption of his guilt, but there shall appear to the magistrate in either of such cases to be sufficient ground for judicial inquiry into his guilt, the person accused shall be admitted to bail.

CXLV.

When bail shall be taken.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as bailable in Schedule A. of this Code of Procedure, he shall at once be admitted to bail.

CXLVI.

Recognizance of accused and sureties.

Where a magistrate shall admit any person accused of any offence, or on suspicion thereof, to bail, a recognizance in such sum of money as the magistrate shall think sufficient is to be entered into by the person so accused, and one or more sureties conditioned that such person shall attend during the preliminary inquiry, and, if required, shall appear at the then next session of the High Court or the Session Court, as the case may be, to answer the charge.

CXLVII.

Insufficient bail.

If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused may be ordered by the magistrate to find sufficient sureties, and in default may be committed to prison.

CXLVIII.

Bail may be taken any time before conviction.

If the accused cannot presently find sureties, he shall be admitted to bail upon his doing so at any time afterwards before conviction.

CXLIX.

Discharge on bail.

After the recognizances shall have been duly entered into, the magistrate, in case the accused shall have appeared voluntarily, or shall be in the custody of some officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the gaoler or other person having him in custody, who shall thereupon liberate him.

CL.

How persons who have bailed may discharge themselves.

Those who have become bail for any person may discharge themselves by taking him and surrendering him before the Court by which he has been bailed, and he may thereupon be committed to prison by the said Court.

CLI.

New sureties.

In such case it shall be competent to such defendant to find new sureties.

CLII.

Whenever by reason of default of appearance of the party executing the personal recognizance the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty in the mode prescribed for the satisfaction of decrees of the Civil Court.

Proceedings to compel payment of penalty by accused.

CLIII.

Whenever by reason of default of appearance by the party bailed the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court, and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the Civil gaol, during a period not exceeding six months.

Proceedings to compel payment of penalty by sureties.

Warrant of Commitment.

CLIV.

Every warrant of commitment shall be directed to some gaoler, keeper, or other officer or person having authority to receive and keep prisoners, either by his name or official description, and shall command the person to whom it is so directed to receive the prisoner and keep him until he be discharged in due course of law.

Warrant of commitment, how to be directed, &c.

CLV.

The warrant (which must be drawn up before the party is sent to prison) shall set forth the name of the defendant in full, if known; but if it be not known, then a description of his person, stating the refusal to tell his name; and shall state in substance the offence in respect of which the prisoner is charged, the authority of the committing officer, and the place of imprisonment.

Warrant, what to contain.

CLVI.

The warrant of commitment shall be lodged with the gaoler, if he be in the gaol; and if he be not, with his deputy; and if he has no deputy, it may be lodged with any officer of the gaol then being in the gaol.

With whom to be lodged.

Adjournment.

CLVII.

If from the absence of witnesses or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of witnesses for any time, it shall be lawful for the magistrate, by a written order, from time to time to adjourn the inquiry, and to remand the person accused for such time as shall be deemed reasonable, not exceeding fifteen days; provided that the magistrate may order such accused person to be brought before him at any time before the expiration of the time for which such accused person shall be so remanded, and the gaoler or other officer in whose custody he shall then be shall duly obey such order; provided also, that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such magistrate, conditioned for his appearance at the time and place appointed for the continuance of such examination.

When magistrate may adjourn the inquiry.

Discharge of the Defendant.

CLVIII.

When defendant to be discharged.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Commitment, &c. of the Defendant for Trial.

CLIX.

When defendant to be committed for trial.

The defendant shall be sent for trial by a magistrate of Madras [*Bombay*] before the High Court, and by a magistrate of a Zillah before the Session Court, when evidence has been given before the magistrate which appears to be sufficient to convict the defendant of an offence which is triable exclusively by the High Court or the Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or the Court of Session.

CLX.

Copy of charge to be furnished to defendant.

Witnesses for the defence on the trial.

As soon as the charge on which the defendant is to be tried has been prepared it shall be read to the defendant, and a copy or translation of it shall be furnished to him. The defendant shall then be at liberty to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the High Court or the Session Court, as the case may be. The magistrate shall receive the list, and summon the witnesses to appear before the Court before which the defendant is to be tried. This, however, shall not prevent a person committed from giving in a further list of witnesses, and having them summoned at any time between the commitment and the trial. The provisions of Articles CXXIV. and CXXV., so far as they relate to the compulsory attendance of witnesses, shall be applicable to witnesses named by the defendant in the lists above mentioned.

CLXI.

Copies of depositions to be furnished to defendant.

When the preliminary inquiry is concluded the defendant shall be entitled to copies of the depositions on the record of the same without delay, if he demands them a reasonable time before the trial.

CLXII.

Warrant of commitment.

Upon the commitment of the defendant to take his trial before the High Court or the Court of Session, as the case may be, the magistrate shall issue a warrant of commitment, stating the offence in the same form as the charge.

CHAPTER XII.

On the Charge.

CLXIII.

What the charge is to contain.

When the magistrate has resolved to send the defendant before the High Court or Court of Session for trial, or put him on his trial before himself for any offence punishable under the Penal Code with imprisonment for a period exceeding six months, he shall make a written instrument under his hand and seal, declaring with what offence the defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the defendant be tried by the said Court on the said charge. In all cases sent for trial to the High Court or Court of Session, the magistrate shall send a copy of this instrument, with the proceedings, to the public prosecutor, where such officer has been appointed, otherwise to the Court before which the defendant is to be tried.

CLXIV.

How the offence is to be described

The charge shall describe the imputed offence as nearly as possible in the language of the clause of the Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause.

CLXV.

Absence of General Exceptions under the Penal Code to be assumed.

It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come within any of the General Exceptions contained in the third chapter of the Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

CLXVI.

Evidence as to General Exceptions.

It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the defendant shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor.

CLXVII.

Clause of the Penal Code containing an exception, not a General Exception.

Where the clause itself referred to in the charge contains an exception, not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the clause, without a distinct denial of the existence of such circumstances.

CLXVIII.

The charge may contain one or more heads.

Charges containing One Head.

CLXIX.

Heads of charge.

Where a charge contains one head only, the form shall be as follows, or to the same effect:

Forms of Charge.

(*a*) I, A. [*name and office of magistrate, &c.*], declare that there is hereby made against Z. the charge:

On clause 109.

(*b*) That he has waged war against the Government of part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th clause of the Penal Code, (*c*) and within the cognizance of the [*style of the Court*].

(*d*) And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate.*]

Where the magistrate tries the case, there must be substituted for (*c*): within my cognizance; and *the words* "by the said Court" *in* (*d*) *may be omitted.*

To be substituted for (*b*):

On clause 112 applied to clauses 111 and 319.

2. That he has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th clause of the Penal Code, and, by committing such offence, has also committed an offence punishable under the 319th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has, by reason of the premises, become liable to cumulative punishment under the 112th clause of the Penal Code.

On clause 129.

3. That he has committed the offence of rioting, and has thereby committed an offence punishable under the 129th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 138.

4. That he has, being a public servant, directly accepted from a party, for another party, a gratification, other than legal remuneration, as a motive for his, the said Z.'s, forbearing to do an official act, and has thereby committed an offence punishable under the 138th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 303.

5. That he has committed voluntary culpable homicide in defence, and has thereby committed an offence punishable under the 303d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 306. 6. That he has previously abetted by aid the commission of suicide by a person in a state of intoxication, and has thereby committed an offence punishable under the 306th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 308. 7. That he has omitted what he was legally bound to do, with such knowledge and under such circumstances that, if he by that omission had caused death, he would have been guilty of murder, and has carried that omission to such a length as, at the time of carrying it to that length, he contemplated as sufficient to cause death, and has thereby committed an offence punishable under the 308th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 319. 8. That he has voluntarily caused grevious hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 319th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 377. 9. That he has committed robbery, and has thereby committed an offence punishable under the 377th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 379. 10. That he has committed dakoity, and has thereby committed an offence punishable under the 379th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 388. 11. That he, being a public servant in the post office department, and being, as such, intrusted with the keeping of a packet, has committed criminal breach of trust by misappropriating a thing contained in such packet, and has thereby committed an offence punishable under the 388th article of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 435. 12. That he has committed lurking house trespass by night, and has thereby committed an offence punishable under the 435th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 436 applied to clauses 364 and 435. 13. That he has committed lurking house trespass by night, being an offence punishable under the 435th clause of the Penal Code, in order to the committing of theft, and has actually committed such theft, being an offence punishable under the 364th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has by reason of the premises become liable to cumulative punishment under the 436th clause of the Penal Code.

And the same form shall be followed, as nearly as may be, in charges with one head only, upon other clauses of the Penal Code.

Charges containing Two or more Heads.

CLXX.

Charge in cases falling within two or more clauses of the Penal Code. When it appears to the magistrate that the facts which can be established in evidence show a case falling within two or more clauses of the Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such clauses.

CLXXI.

Two or more offences punishable under the same clause. When it appears to the magistrate that the facts which can be established in evidence show the commission of two or more offences punishable under the same clause of the Penal Code, the charge shall contain two or more heads charging such offences respectively.

CLXXII.

Cases of doubt as to the clause which is applicable, or the offence which may be proved. When it appears to the magistrate that the facts which can be established in evidence show a case within some one of two or more clauses of the Penal Code, but it is doubtful which of such clauses will be applicable, or show the commission of one of two or more offences punishable under the same clause of the Penal Code, but it is doubtful which of such offences will be proved to have been committed, the charge shall contain two or more heads, framed respectively on each of such clauses, or charging respectively each of such offences accordingly.

CLXXIII.

Form of charge of more than one head. When a charge contains more heads than one, the form shall be as follows, or to the same effect:

Forms of Charge.

I, A. [*name and office of magistrate, &c.*] declare that there is hereby made against Z. the charge:

First: That he has, knowing a coin to be counterfeit, delivered the same to another person as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 242, 243.

Secondly: That he has, knowing a coin to be counterfeit, attempted to induce another person to receive it as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and intending that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and knowing it to be likely that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate, &c.*]

First: That he has committed murder, and has thereby committed an offence punishable under the 300th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 300, 301.

Secondly: That he has committed manslaughter, and has thereby committed an offence punishable under the 301st clause of the Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 367.

Secondly: That he has committed theft, having made preparation for causing death to a person in order to the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has committed theft, having made preparation for causing restraint to a person in order to retiring after the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 387.

Secondly: That he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And the same shall be followed, as nearly as may be, in charges with more heads than one, upon other clauses of the Penal Code.

CLXXIV.

It shall be competent to the Court, at any stage of a trial, to amend or alter the charge against a defendant. Amendment of charge.

CLXXV.

If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the defendant in his defence, it shall be at the discretion of the Court, after making the When the trial may be immediately proceeded with after amendment.

amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

CLXXVI.

When a new trial may be ordered, or trial suspended.

If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the defendant in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the defendant to make his defence to the amended or altered charge; and, after hearing his defence, may further adjourn the trial to admit of the appearance of any witnesses whose evidence the Court may consider to be material to the case, or whom the defendant may wish to be summoned in his defence. If after the reading of the amended or altered charge to the defendant no postponement is desired by the defendant, or considered necessary by the Court, the Court may at once proceed with the trial.

CLXXVII.

Defendant may recal and cross-examine witnesses for prosecution.

In all cases of amendment or alteration of a charge, the defendant shall be allowed to recal and cross-examine any witness that may have been examined for the prosecution.

CHAPTER XIII.

Of Offences triable by the Magistrate.

Cases in which a Warrant on Complaint may issue against the Defendant

Complaint and issuing of Process for causing the Attendance of the Accused.

CLXXVIII.

Cases in which magistrate may issue a warrant.

Summons instead of warrant.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any offence triable by such magistrate, and which is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint.

CLXXIX.

Postponement of issue of process.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CLXXVIII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

CLXXX.

Magistrate may direct bail to be taken.

It shall be at the discretion of the magistrate, in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct that if such person be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release such person from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CLXXXI.

Magistrate may dispense with personal attendance of accused.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CLXXXII.

Arrest on warrant indorsed by a magistrate of another district.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

CLXXXIII.

Proclamation for an absconding party.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself.

Attachment of property.

The attachment under this article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the magistrate shall deem proper under the circumstances of each case.

Property after six months to be at the disposal of Government.

If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Summoning, &c. of Witnesses.

CLXXXIV.

Summons to a witness to attend and give evidence.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

CLXXXV.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by

the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

CLXXXVI.

In what cases warrant in the first instance.

If the magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CLXXXVII.

Refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit such witness to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Examination of Parties and Evidence.

CLXXXVIII.

Examination of the complainant and witnesses for the prosecution.

When any such case, as referred to in Article CLXXVIII., is brought before a magistrate, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the magistrate from examining the defendant at any stage of the proceedings, as provided in Article CXCIV.

CLXXXIX.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXC.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXCI.

Magistrate not to receive written confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the head or other officer of police, and by him reduced into writing.

CXCII.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CXCIII.

It shall be at the discretion of the magistrate, at any stage of the proceedings, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

May summon necessary witnesses at any stage of the proceedings.

CXCIV.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the proceedings, from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the proceedings are completed and judgment pronounced

Examination of defendant.

CXCV.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

Magistrate how to proceed in case of confession.

CXCVI.

No influence, by means of any promise or threat, shall be used to any defendant under examination, to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

CXCVII.

The examination of the defendant, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing, as he gives it, at the foot of the examination; and, whether the defendant signs it or not, the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement.

Examination of the defendant how to be recorded.

CXCVIII.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

Defendant may be detained for any offence committed by him.

CXCIX.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of examination for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Any person attending may be detained for any offence committed by him.

Bail and Warrant of Commitment.

CC.

The provisions of Articles CXLIV. to CLVI. inclusive shall be applicable to cases triable by the magistrate under the rules contained in this section.

Application of previous rules.

Adjournment.

CCI.

The provisions of Article CLVII. shall be applicable to cases triable by the magistrate under the rules of this section.

Application of previous rules.

Discharge of the Defendant.

CCII.

When defendant to be discharged.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Charge, Plea, and Defence.

CCIII.

Charge.

When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the defendant as the magistrate may consider necessary, have been taken, the magistrate shall consider whether any and what offence is *primâ facie* proved against the defendant, and if he finds that an offence is apparently proved against the defendant which falls within the definition in a certain clause of the Penal Code, or within one or other of the definitions in several clauses of the code, he shall prepare in writing a charge against the defendant in the manner prescribed in Chapter XII. of this Code of Procedure.

CCIV.

Plea.

The charge shall then be read to the defendant, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCV.

Plea of "guilty."

If the defendant plead "guilty," the magistrate shall explain to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge, and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCVI.

Plea of "not guilty."

If the defendant plead "not guilty" to the charge, he shall be called upon to enter upon his defence, and to produce his evidence, if in attendance, and shall be allowed to recal and cross-examine the witnesses for the prosecution.

CCVII.

Evidence for the defence.

The magistrate shall summon any witness, and examine any evidence, that may be offered in behalf of the defendant, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCVIII.

Witnesses for the defence.

The provisions of Articles CLXXXV., CLXXXVI., CLXXXVII., and CXC. shall be applicable to witnesses named in support of the defence.

CCIX.

Conviction.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

CCX.

How the magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

In any trial before a magistrate, wherein it may appear, at any stage of the proceedings, that either from the value of the property exceeding the pecuniary limit assigned to the magistrate, or other cause, the case is one which the magistrate is not competent to try, the magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with the Rules of Chapter XI. for conducting preliminary investigations in cases triable by the High Court or Session Court; and if the accused have been called upon to plead to a charge or charges prepared by the magistrate, such charge or charges, and the proceedings consequent thereon, shall be held to be null and void.

CHAPTER XIV.

Of Offences triable by the Magistrates.

Cases in which a Summons on Complaint shall issue to the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CCXI.

In all cases where a complaint shall be made before a magistrate, having jurisdiction in the case, that any person has committed or is suspected to have committed any offence other than the offences provided for in Chapter XIII. of this Code of Procedure, for which he is liable, upon a summary conviction for the same before a magistrate, to be imprisoned or fined, or otherwise punished, it shall be lawful for such magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such magistrate, to answer to the said complaint; provided that if the magistrate shall be satisfied by evidence before him that the accused is about to abscond, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance for the arrest of the accused.

Summons shall issue.

When warrant may issue.

CCXII.

Every such summons shall be served upon the person to whom it is so directed, by delivering the same to such person, or by leaving the same with some adult member of his family; and the proper officer shall certify the service of the said summons.

Service of Summons.

CCXIII.

Provided that, before issuing the summons to the accused party it shall be competent to the magistrate to examine the complainant as to the specific facts of the case, and if upon such examination it shall appear to the magistrate that there is no sufficient ground for summoning the accused, he may refuse the summons.

When magistrate may refuse summons.

CCXIV.

If the person served with a summons as provided in Article CCXII. shall not be and appear before the magistrate at the time and place mentioned in such summons, and it shall be made to appear to the magistrate that such summons was so served in what shall be deemed by the magistrate to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such magistrate, if he shall think fit, upon declaration being made before him substantiating the matter of such complaint to his satisfaction, to issue his warrant to apprehend the person so summoned, and to bring him before such magistrate to answer to the said complaint.

If summons be not obeyed, warrant.

CCXV.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Magistrate may dispense with personal attendance of accused.

Summoning, &c. of Witnesses.

CCXVI.

If it shall be made to appear to the magistrate that any person is likely to give material evidence in behalf of the complainant or defendant in any case which may be tried according to the rules of this Chapter, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, such magistrate shall issue his

Summons to witness to attend and give evidence.

summons to such person under his hand and seal, requiring him to appear at a time and place mentioned in the summons, before the said magistrate, to testify what he knows concerning the matter of the said complaint.

CCXVII.

Diet money for witnesses.

It shall be lawful for the magistrate to direct that before any process is issued for the attendance of witnesses in cases under this Chapter, the person preferring the charge shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witnesses who may be summoned on his application, during their attendance at the magistrate's Court, and the magistrate shall regulate the amount of diet money so required, with reference to the probable period such witnesses may have to be in attendance, and in the event of the prolonged detention of witnesses, shall direct the deposit of any further sum which to the said magistrate may seem requisite.

CCXVIII.

Magistrate may summon necessary evidence.

It shall be at the discretion of the magistrate, at any stage of the trial, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CCXIX.

Application of previous rules.

The provisions of Articles CLXXXV., CLXXXVI., and CLXXXVII. shall be applicable to witnesses summoned according to the provisions of Articles CCXVI. and CCXVIII.

Bail.

CCXX.

Defendant may be admitted to bail or to be at large upon personal Recognizance.

If upon the day and at the place appointed the defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the magistrate by virtue of any warrant, it shall be at the discretion of the magistrate to admit the defendant to bail, or allow him to be at large upon his personal recognizance. If he cannot give bail, when required to do so, he shall be committed to custody. In cases in which the order of the magistrate shall direct that the defendant be admitted to bail, the provisions of Articles CXLIV. to CLIII. inclusive shall be applicable to cases tried according to the provisions of this Chapter.

Appearance, Examination of Parties, and Evidence.

CCXXI.

Nonappearance of complainant.

If upon the day appointed for the appearance of the defendant, or any day subsequent thereto, on which the case may be called on, the complainant does not appear, the magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he shall think fit.

CCXXII.

Admission by defendant of truth of complaint.

On the appearance of both parties for the hearing of the case, the substance of the complaint shall be stated to the defendant, and he shall be asked if he have any cause to show why he should not be convicted; and if he thereupon admit the truth of such complaint, and show no cause, or no sufficient cause, why he should not be convicted, then the magistrate may convict him accordingly,

CCXXIII.

Proceeding when no such admission is made.

If the defendant do not admit the truth of the complaint, then the magistrate shall proceed to hear the complainant, and such witnesses as he may examine in support of his complaint, and also to hear the defendant and such witnesses as he may examine in his defence; and having heard the parties and their witnesses, shall consider the whole matter and determine the same, and shall convict the defendant or dismiss the complaint, as the case may be.

CCXXIV.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXXV.

Adjournment.

Before or during the hearing of any complaint, it shall be lawful for the magistrate to adjourn the hearing of the same to a future day, to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall be so adjourned the defendant shall not appear, the magistrate may issue his warrant for the arrest of such defendant, and if the complainant shall not appear, the magistrate may dismiss such complaint.

CCXXVI.

Formal charge may be prepared.

It shall be at the discretion of the magistrate, in the trial of any case in which a summons on complaint shall issue to the defendant, to follow the rules of procedure prescribed in Chapter XII. for the preferring of criminal charges, and in Articles CCIII. to CCVIII. inclusive, for the trial of such charges.

CCXXVII.

Conviction.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

Costs.

CCXXVIII.

Magistrate may award Costs.

In all cases of summary conviction under this chapter, it shall be lawful for the magistrate making the same, in his discretion, to award that the defendant shall pay to the complainant such costs as to such magistrate shall seem just and reasonable; and in cases where such magistrate, instead of convicting as aforesaid, shall dismiss the complaint, it shall be lawful for him, in his discretion, in and by his order of dismissal, to award and order that the complainant shall pay to the defendant such costs as to such magistrate shall seem just and reasonable; and the sums so allowed for costs shall always be specified in such conviction, or order of dismissal aforesaid, and shall be recoverable by distress and sale of the goods and chattels of the party, and, in default of such distress, by imprisonment, without labour, in the gaol for the confinement of debtors, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

CHAPTER XV.

Of Inquiries and Trials before the Subordinate Criminal Courts.

CCXXIX.

How cases are to be brought before Subordinate Criminal Courts.

Criminal cases shall be brought before the Subordinate Criminal Courts by reference by the magistrate. It shall, however, be at the discretion of the Government, respect being had to the public convenience, to authorize a

Subordinate Criminal Court also to receive such cases on complaint preferred directly to such Court, or on the report of a police officer.

CCXXX.

Cases how to be referred.

Whenever a criminal case is referred by a magistrate to a Subordinate Criminal Court, the order of reference, if the case have been transmitted by a police officer, shall be recorded on such officer's report, and if the complaint have been preferred direct to the magistrate, the process for causing the attendance of the accused shall be made returnable to the Court to which the case is referred, and the witnesses shall be directed by the summons to attend at such Court.

CCXXXI.

Subordinate Criminal Courts to follow the same rules of procedure as the magistrate.

In the trial of criminal cases, whether brought before them on reference by the magistrate, or directly by complaint preferred to themselves, or by the report of a police officer, the Subordinate Criminal Courts shall be guided by the rules prescribed for the guidance of the magistrate in similar cases, and police officers and others shall be bound to obey all orders and processes issued in such cases by a Subordinate Criminal Court in like manner as if they had been issued by the magistrate.

CCXXXII.

Mode of proceeding in cases beyond jurisdiction.

In every case before a Subordinate Criminal Court, wherein the Court, at any stage of the proceedings, may be of opinion that the evidence is such as to warrant a presumption that the defendant has been guilty of an offence calling for a more severe punishment than the Court is authorized to adjudge, it shall stop further proceedings, and if the case have been brought before it by complaint directly preferred, shall leave the complainant to apply to the magistrate, and in all other cases shall submit its proceedings to the magistrate, who shall either try the case himself, or if the case have been submitted by a Subordinate Criminal Court of the second class, refer it, at his discretion, to a Subordinate Criminal Court of the first class. In either case, the Court which gives judgment in the trial shall examine the parties and the evidence, as if no proceedings had been held in any other Court.

CCXXXIII.

Foregoing rule not to interfere with the power of a S.C.C. to commit for trial before the Session Court.

Provided, that nothing in the last preceding article shall be held to interfere with the exercise of power specially conferred upon a judge of a Subordinate Criminal Court, in regard to committing or holding to bail persons charged with criminal offences to take their trial before the Session Courts.

CHAPTER XVI.

Place where Preliminary Investigations and Trials held, an open Court.

CCXXXIV.

Place where investigation made, an open Court.

The room or place in which the magistrate, or judge of a Subordinate Criminal Court, shall sit to hear and try any complaint triable by himself, or to conduct the preliminary investigation into any case triable by the High Court or a Session Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for the magistrate or judge of a Subordinate Criminal Court, in his discretion, to order that during the investigation into any particular case triable by the High Court or a Session Court, no person shall have access to, or be or remain in such room or building without the consent or permission of such magistrate or judge, if it appears to him that the ends of justice will be best answered by so doing.

CHAPTER XVII.

Of Recognizance and Security to keep the Peace.

CCXXXV.

Whenever a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Criminal Court by which the offence may be cognizable; and the Court by which a final sentence or order in the case may be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted; it shall be lawful to the Court passing the final sentence or order, to direct that the person so convicted be required to execute a formal engagement in a sum proportionate to such person's condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year from the time of the prisoner's discharge, if the sentence or order be passed by a magistrate or other officer exercising the powers of a magistrate, or three years, if the sentence or final order be passed by the High Court, or by a Session Court.

Personal recognizance to keep the peace in cases of conviction.

CCXXXVI.

In cases wherein it may appear necessary to require security for keeping the peace in addition to the personal recognizance of the party, it shall also be lawful to the Court passing the final sentence or order, to direct the same, and to fix the amount of the security bond to be executed by the surety or sureties; with a provision that if the same be not given the party required to find the security shall be kept in custody for any time not exceeding one year, if the order be passed by a magistrate, or other officer exercising the powers of a magistrate, or three years if the order be passed by the High Court, or by a Session Court.

Security to keep the peace.

CCXXXVII.

It shall be lawful for the magistrates, or other officers exercising the powers of a magistrate, to take a recognizance from a party in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizance may not have been convicted of any specific offence.

Personal recognizance without conviction.

CCXXXVIII.

In cases wherein it may appear necessary to require security for keeping the peace, in addition to the recognizance of the party, it shall be lawful for such magistrate, or other officer exercising the powers of a magistrate, to direct the same, although the party required to give such security may not have been convicted of any specific offence, and to fix a reasonable amount for the security bond to be executed by the surety or sureties.

Security without conviction.

CCXXXIX.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, need not exceed one year, it shall be lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security, to commit the party to prison in the civil gaol until he shall do what has been required of him.

For one year.

CCXL.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the magistrate or other officer aforesaid shall record his opinion to that effect, with an order specifying the amount of recognizance and security, as well as the

For more than one year.

number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however shall in no case exceed three years. If the party shall not furnish the recognizances and security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Court of Session (according as the order may have been passed by a magistrate of Madras [*Bombay*] or by a magistrate of a district in the Mofussil), which, after examining them and calling for any further information or evidence which it may think necessary, shall pass orders on the case confirming, modifying, or annulling the orders of the magistrate or other officer as aforesaid, and if the orders so passed by the High Court or Session Court confirm to any extent the requisition for recognizance or securities, the High Court or Session Court shall direct the magistrate or other officer as aforesaid to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXLI.

Imprisonment not to exceed period of recognizance and security.

Provided always, that no party shall be kept in prison under the provisions of the foregoing articles for a longer period than that for which the recognizance and securities have been required from him.

CCXLII.

When magistrate may release persons under requisition of security.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security to keep the peace, whether by their own orders or by those of any other person exercising the powers of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCXLIII.

When he must report.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security to keep the peace, by order of the High Court, or of a Session Court, can be safely released without such security, the magistrate shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCXLIV.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the peaceable behaviour of parties may, at all times, obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

CCXLV.

Proceeding to compel payment of penalty of personal recognizance.

Whenever it may be proved before the magistrate that any such recognizance of a party as aforesaid has been forfeited, he shall proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the Civil Court.

CCXLVI.

Proceeding to compel payment of penalty by sureties.

Whenever it may be proved before the magistrate that any such recognizance has been forfeited, if a security bond shall have been taken and the magistrate shall think that proceedings should be had upon such bond, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XVIII.

Security for Good Behaviour.

CCXLVII.

When magistrate may require security for good behaviour for one year.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, it shall be competent to the magistrate to require security for the good behaviour of such person for a definite period not exceeding one year.

CCXLVIII.

How to proceed in cases beyond one year.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by habit a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the magistrate shall record his opinion to this effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

CCXLIX.

Case to be laid before the High Court or Session Court.

If the person required to furnish security, as provided in the last preceding article, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Sessions Court, (according as the order may have been passed by a magistrate of Madras [*Bombay*] or by a magistrate of a district in the Mofussil,) which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as it may judge proper and equitable.

CCL.

High Court or Session Court may require security not exceeding three years.

In all such cases, if the High Court or Session Court shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

CCLI.

What the order for security is to contain.

In every instance in which security for good behaviour may be required, whether by the High Court, the Session Court, or the magistrate, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated.

CCLII.

In default of security, party to be committed to prison.

In the event of any person required to give security under the provisions of the foregoing articles failing to furnish the security so required, he shall be committed to prison until he furnish the same; provided always, that no party shall be kept in prison for a longer period than that for which the security has been required from him.

CCLIII.

When magistrate may release persons under requisition of security.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders or by those of any other person discharging the functions of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCLIV.

When he must report.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security for good behaviour, by order of the High Court or of a Session Circuit, can be safely released without such security, the magistrate shall make an immediate report of the case, with his sentiments, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCLV.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the good behaviour of parties may at all times obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

CCLVI.

Proceeding to compel payment of penalty by sureties.

Whenever the magistrate shall be of opinion, that by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, proceedings should be had upon the bond executed by the surety or sureties, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties, by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XIX.

Juries and Assessors.

CCLVII.

Grand juries abolished.

Grand juries shall be abolished.

CCLVIII.

Trials in Madras [*island of Bombay*] to be by jury.

The trial of all offences within the limits of the town of Madras [*island of Bombay*], except offences punishable upon summary conviction, shall be by jury.

CCLIX.

Governor in Council may extend trial by jury to other places.

The provisions of the preceding Article may be extended by the Governor in Council to such places beyond the limits of the town of Madras [*island of Bombay*] as he may see fit.

CCLX.

Trial by jury, before the Session Court, of registered persons.

How the jury is to be constituted.

Criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor in Council may see fit to extend this rule, registered according to such rules as the Governor in Council shall prescribe, is the defendant or one of the defendants, shall be by jury, of which at least one half shall consist, if such defendant desire it, of persons so registered.

CCLXI.

Joinder of registered and non-registered persons.

Criminal trials before the Session Judge, in which registered and non-registered persons are joined as defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial.

CCLXII.

In such cases, if the non-registered defendant desire it, at least one half of the jury shall consist of non-registered persons, and if the registered defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered, and the remaining half non-registered persons.

How the jury is to be constituted in such cases.

CCLXIII.

In all trials, whether before the High Court at Madras [*Bombay*] or before the Session Judge, the jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two thirds, with the concurrence of the judge, shall be necessary for a verdict of guilty; and in default of such unanimity, or of such majority, with the concurrence of the judge, the defendant shall be acquitted.

Number of which the jury is to consist.

Number of voices necessary to a verdict of guilty.

CCLXIV.

Provided that at Madras [*Bombay*] the jury shall, in all cases, consist of nine persons, and at all other places, of such number of persons, not less than three, as the Governor in Council shall from time to time direct.

In Madras [*Bombay*] jury not to consist of less than nine.

CCLXV.

For all classes of the community not included in the number of those to whom the mode of trial by jury has by the above provisions been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed; and if any of the assessors or the judge shall desire it, the opinion of the assessors shall be recorded in writing. But the decision is vested exclusively in the judge.

Trials before the Session Court with assessors.

CCLXVI.

All persons resident within the limits of the general jurisdiction of the High Court shall, according to such rules, and subject to such qualifications as shall be fixed in manner herein-after mentioned, be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Who are capable of serving as jurors and assessors.

CCLXVII.

The High Court shall have power from time to time to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors and assessors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall before they are issued have received the sanction of the Governor in Council.

High Court to make rules in regard to jurors and assessors.

CHAPTER XX.

TRIALS BEFORE THE COURT OF ORIGINAL CRIMINAL JURISDICTION CONSTITUTED BY A JUDGE OR JUDGES OF THE HIGH COURT.

CCLXVIII.

When it happens that a Judge of the High Court has sent a case for trial before the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, or that a person is appointed to officiate as a Judge of the High Court, who had previously officiated in the Court by which commitments are made to that Court, and there are before the High Court charges preferred by himself upon which trials are still to be held, it shall nevertheless be competent to him to proceed thereupon as in other cases.

A person holding the office of Judge of the High Court may try cases committed by himself.

CCLXIX.

It shall be competent to the High Court to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

Postponement of trial.

CCLXX.

Commencement of trial.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXXI.

Plea of guilty.

If the defendant plead "guilty," the Court shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy itself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCLXXII.

Refusal to plead, or plea of "not guilty."

Mode of taking evidence.

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course, and in the manner in which it has heretofore been taken in trials in the Supreme Court, except in so far as it is otherwise provided by this Code of Procedure.

CCLXXIII.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

CCLXXIV.

Examination of defendant, evidence at the trial.

The examination of the defendant before the magistrate shall be given in evidence at the trial.

CCLXXV.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCLXXVI.

Defence.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence and to produce his evidence.

CCLXXVII.

Witnesses for the defence.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI.

CCLXXVIII.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCLXXIX.

Jury to attend at adjourned sitting.

In the event of the adjournment of a trial, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

CCLXXX.

Summing up and delivery of verdict.

The Judge shall sum up the evidence on both sides, and the jury shall afterwards deliver their finding upon the charge.

CCLXXXI.

Conviction.

If the defendant is convicted, the Court shall pass sentence upon him according to law.

CHAPTER XXI.

Cases reserved, and Cases certified by the Advocate General.

CCLXXXII.

Judges of the High Court, in the exercise of original jurisdiction, may reserve cases for the opinion of the High Court.

When any person shall have been convicted of any offence before a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, the Court before which the case shall have been tried may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the High Court, and thereupon shall have authority to respite execution of the sentence on such conviction, or postpone the sentence until such question shall have been considered and decided, as it may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive sentence, or to render himself in execution, as the case may be.

CCLXXXIII.

Statement of case.

Hearing.

When the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court has reserved a point of law for the opinion of the High Court, the Judge or Judges before whom the trial was held shall, in a case signed by such Judge or Judges, state the point or points of law which shall have been so reserved, and such case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges reserving the point or points shall if possible be one, and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to pass such judgment and sentence as to the said Judges shall seem right, or to alter the sentence, if any, passed by the Court of original jurisdiction.

CCLXXXIV.

Error in law may be certified by the Advocate General.

It shall be lawful for any party upon whom sentence of punishment has been passed by a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, to present a memorial to the Advocate General, alleging that there is error in the decision of such Court on a point of law, and distinctly specifying such error. If the Advocate General is of opinion that there is error as set forth in the memorial, or that a point or points of law decided by the Court of original criminal jurisdiction should be further considered, he shall certify the same under his signature on the back of the memorial, and transmit the memorial with such certificate to the Judge or Judges before whom the trial was held; otherwise he shall reject the memorial.

CCLXXXV.

Statement of case.

Hearing.

Upon the receipt of such memorial, together with the certificate of the Advocate General, the Judge or Judges before whom the trial was held shall transmit the memorial and certificate, with a statement of facts and such remarks as he or they may deem necessary, to the High Court. The case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges before whom the trial was held shall, if possible, be one; and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said Judges shall seem right.

CHAPTER XXII.

Trials before the Session Courts.

CCLXXXVI.

Cognizance of offences by the Session Court in original jurisdiction.

Except in the cases referred to in Article CXVI. a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence but upon a charge preferred by the Advocate General, or by a magistrate or other officer specially empowered by the Government to act in this behalf.

CCLXXXVII.

A person holding the office of Session Judge may try cases committed by himself.

When it happens that a Zillah Judge has sent a case for trial before the Court of Session, or that a person is appointed to officiate as Judge of a Court of Session, who had previously officiated in the Court by which commitments are made to that Court of Session, and there are before the Court of Session charges preferred by himself upon which trials are still to be held, he shall nevertheless proceed thereupon as in other cases.

CCLXXXVIII.

Postponement of trial.

It shall be competent to a Court of Session to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

CCLXXXIX.

Commencement of trial.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCXC.

Plea of "guilty."

If the defendant plead "guilty," the Judge shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCXCI.

Refusal to plead, or plea of "not guilty."

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course.

CCXCII.

How evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness and signed by him in the presence of the Judge. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be at the discretion of the Judge to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Judge shall allow the same to be put, the question and answer shall be taken down, and the objection and the name of the person making it shall be noticed in taking down the depositions, together with the decision of the Judge upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXCIII.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

CCXCIV.

Examination of defendant, evidence at the trial.

The examination of the defendant before the magistrate shall be given in evidence at the trial.

CCXCV.

Session Court not to receive written confession of guilt made to the police.

It shall not be competent to the Session Court to receive in evidence against the defendant any written admission or confession of guilt or other statement made by him to the darogha, or other officer of police, and by him reduced into writing.

CCXCVI.

Nothing contained in the foregoing Article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence. *But may receive evidence of a police officer as to unrecorded admission of guilt.*

CCXCVII.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case. *Court may summon necessary evidence.*

CCXCVIII.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence, and to produce his evidence. *Defence.*

CCXCIX.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI. *Witnesses for the defence.*

CCC.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time. *Adjournment.*

CCCI.

In the event of the adjournment of a trial, the jury or assessors, as the case may be, shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial. *Jury or assessors to attend at adjourned sitting.*

CCCII.

In cases tried with the aid of assessors, the judge before pronouncing his own opinion, shall call upon the assessors for their opinions. The opinion of each assessor shall be given separately and recorded. *Delivery of opinions of assessors.* In cases tried by jury, the judge shall sum up the evidence on both sides, and the jury shall then deliver their finding upon the charge. *Of verdict of jury.*

CCCIII.

If the defendant is convicted, and the case is one which the Session Judge is competent to dispose of finally, he shall proceed to pass sentence upon the defendant according to law. *Conviction.*

CCCIV.

If the case is one in which, if the defendant be convicted, it belongs to the High Court to pass sentence, the Session Judge shall record the conviction, and refer the case to the High Court, with a statement in writing of his opinion as to the sentence which should be passed upon the defendant; and in cases tried by jury, the Session Judge shall also transmit with the case a report of his direction to the jury. *Reference to High Court.*

CCCV.

The Session Judges shall transmit to the High Court monthly statements or calendars in such form as the High Court shall prescribe, of all trials held by them, exhibiting the sentence passed upon each defendant, together with an abstract of the evidence given at the trial. *Transmission of monthly calendar of trials by Session Judge.*

CHAPTER XXIII.

HIGH COURT,

As a Court of Reference.

CCCVI.

Court for hearing of referred trials.

A case referred by a Session Judge for the final judgment and sentence of the High Court shall be heard by a Court constituted by three judges of the said High Court, and the sentence shall be signed by not less than two of such judges.

CCCVII.

Hearing of case referred, tried with assessors.

In cases referred for the final judgment and sentence of the High Court, which have been tried with the aid of assessors, that Court shall revise the record of trial submitted by the Court of Session, and if it approves of the conviction of the defendant, it shall proceed to sentence him to punishment according to law.

CCCVIII.

Acquittal.

If the High Court disapproves of the conviction of the defendant absolutely, it shall pass a judgment of acquittal.

CCCIX.

Difference of opinion between High Court and Session Court as to offence proved.

If the High Court disapproves of the conviction of the defendant, on the ground that the offence proved does not answer to the legal definition of the offence of which he is convicted, it shall annul the conviction; but it shall be competent to the Court to pass a judgment convicting the defendant of the offence which it deems to be proved by the evidence, and to sentence him to punishment according to law.

CCCX.

Competence of Court to direct further inquiry, &c.

In any case referred as above to the High Conrt, it shall be open to the prosecutor or the defendant to move the Court for further inquiry upon any point bearing upon the guilt or innocence of the defendant; and it shall be competent to the Court, upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case.

CCCXI.

Hearing of case referred, tried by jury.

In cases referred for the sentence of the High Court which have been tried by jury, the Court, on reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, shall determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right.

CHAPTER XXIV.

Finding, Judgment, and Sentence.

CCCXII.

Form of verdict in jury trials.

In any trial by jury, when the jury are unanimous in thinking the defendant guilty, the verdict shall be that the defendant is guilty of the offence specified in the charge, or of the offence specified in such a head of charge, when there are more heads than one. When the jury are not unanimous, but two thirds or more concur in thinking the defendant guilty, the verdict shall be that the defendant is found guilty of the offence specified in the charge, or in such a head of charge as above provided, by a majority consisting of six, seven, eight, as the case may be of the jurors. When any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the verdict shall be that the defendant is not guilty. When the jury or two thirds or more of the jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of charge the offence falls, the verdict shall be that the defendant guilty either of the offence charged in such a head, or of the offence charged in such another head of charge.

CCCXIII.

When the trial in any Criminal Court is concluded, the Court, in passing judgment, if it convicts the defendant, shall distinctly specify the offence of which, and the clause of the Penal Code under which, it convicts him; or if it be doubtful under which of two clauses the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Clause 61. What the judgment is to specify.

The latter part of the two preceding articles has been framed in accordance with the provisions of the following clause of the Penal Code; "In all cases in which judgment is "given in the manner prescribed in the law of procedure that a person is guilty of an offence, "but that it is doubtful under which of certain penal provisions of this Code he is punishable, "the offender shall be liable to be punished with whatever punishment is common to the penal "provisions between which the doubt lies, and if imprisonment is common to the penal pro- "visions between which the doubt lies, and any one of those provisions admits of simple "imprisonment, the offender may be sentenced to simple imprisonment."

CCCXIV.

If the defendant, after having been called upon for his defence, is acquitted, the acquittal shall be recorded so as to have a distinct reference to the charge to which the defendant was required to answer, in order to save him from any further prosecution upon the facts to which it related. Acquittal.

CCCXV.

The finding and sentence shall be recorded in the following form, or to the same effect:— Form of finding and sentence.

In trials by Jury:

When the Jury are unanimous:

The Jury find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* [*sentence*].

2d. The Jury find that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

When the Jury are not unanimous, but two thirds or more of the Jurors concur in thinking the defendant guilty:—

3d. A majority of the Jurors, consisting of seven of their number, find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code. The Court concurs in such finding, and, as *Z* has, by reason of the premises, become liable to cumulative punishment under the 112th Clause of the Penal Code, the Court directs that the said *Z* be [*sentence*].

4th. A minority of the Jury, consisting of two of their number, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code, and has by reason of the premises become liable to cumulative punishment under the 112th Clause of the Penal Code. The Court concurs in such finding, and directs that the said *Z* be discharged.

5th. When the Jury are not unanimous, but any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the form No. 2 shall be followed.

When the Jury, or two thirds or more of the Jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls:—

6th. The Jury (*or* The majority of the Jurors consisting of of their number, *as the case may be*,) find that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code. The Court directs (*or*, the Court concurs in such finding, and directs,) that under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials with Assessors:

7th. The Court, concurring with the Assessors, (or one or more of the Assessors,) finds that *Z* is guilty of the offence specified in the charge; viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said Z be [*sentence*].

8th. The Court, differing from the Assessors, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

9th. The Court, concurring with one of the Assessors, finds that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code; and the Court direct that, under the provisions of the above-mentioned clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials upon a formal charge, without Jury or Assessors:

10th. The Court finds that *Z* is guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

11th. The Court finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 264th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

In trials in which no formal charge has been prepared:

12th. The Court finds that *Z* has committed assault, and has thereby committed an offence punishable under the 342d Clause of the Penal Code, and directs that the said *Z* be [*sentence*].

13th. The Court finds that the complaint of assault is not proved, acquits *Z*, and directs that he be discharged.

CCCXVI.

Conviction of offences punishable cumulatively.

Where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment to which such person is sentenced for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

CCCXVII.

Where a person shall be convicted of several offences at the same time, punishable under the same or different clauses of the Penal Code, it shall be lawful for the Court to sentence him to the several penalties prescribed by the Code in respect of the several offences of which he shall have been so convicted, provided that the punishment to which such person is sentenced for each offence is within the ordinary penal jurisdiction of the Court, such penalties, when consisting of imprisonment, to commence the one after the expiration of the other; and it shall not be necessary for the Court, only by reason of the aggregate punishment for the several offences being in excess of the punishment which the Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Conviction of several offences.

CCCXVIII.

Where sentence shall be passed on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment on the subsequent conviction, to commence at the expiration of the imprisonment to which such offender shall have been previously sentenced; and if empowered to pass sentence of transportation or banishment, the Court may award such sentence on the subsequent conviction to commence immediately, or at the expiration of the imprisonment to which such person shall have been previously sentenced.

Judgment on offender already imprisoned under sentence for another crime.

CCCXIX.

A party who has once been tried upon a formal charge, prepared as directed in the rules in the Code of Procedure for preparing criminal charges, shall not be liable to a renewed prosecution.

Party tried upon formal charge not liable to renewed prosecution.

CCCXX.

In cases referred by the Session Judge for the final sentence of the High Court, the proper officer of the Court shall, within three days after passing of the sentence, or sooner if practicable, transmit a copy of it, under the seal of the High Court, and attested with his official signature, to the Session Judge, who shall immediately issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the receipt of the warrant, shall cause the sentence to be executed, and return the warrant to the Session Judge, with an indorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed.

Execution of sentence of the High Court in cases referred by the Session Judge.

CCCXXI.

In cases tried by the Court of original jurisdiction at Madras [*Bombay*], constituted by one or more judges of the High Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the chief magistrate of Madras [*Bombay*].

High Court, in original jurisdiction, to direct warrant of execution to chief magistrate of Madras [*Bombay*].

CCCXXII.

In cases tried by the Session Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the magistrate of the district in which the trial was held.

Session Court to direct warrant to district magistrate.

CCCXXIII.

Upon the receipt of a warrant under of either the two last preceding articles, the magistrate shall cause the sentence to be executed, and shall return the warrant when the sentence has been fully executed to the Court from whence it issued, with an indorsement under his official seal and signature, certifying the manner in which the sentence has been executed.

Execution of sentence under two foregoing articles.

CCCXXIV.

In every case of imprisonment under the sentence of the High Court, whether as a Court of reference or of original jurisdiction, of the Session Court, and of the magistrate, the magistrate shall issue his warrant to the gaoler, stating the offence of which the defendant has been convicted, and the period during which he is to be imprisoned. In like manner, in every case of imprisonment under the sentence of a Subordinate Criminal Court, the Court passing the sentence shall issue its warrant to the same effect.

Warrant of commitment in cases of imprisonment.

CHAPTER XXV.

High Court as a Court of Revision.

CCCXXV.

Revision in cases of illegal sentence.

The High Court, in any case tried by the Session Court, in which upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Session Court the sentence which may lawfully be passed for such offence; and thereupon the Session Court shall pass a new sentence according to law, and shall amend the record in accordance therewith.

CCCXXVI.

When the sentence is too severe.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed upon any person convicted by the Session Court is too severe, may mitigate the sentence to such extent as to the said High Court shall seem proper, and shall certify such mitigated sentence to the Session Court, which shall thereupon amend the record in accordance therewith, and proceed to give effect to the sentence of the High Court.

CCCXXVII.

When in trials with assessors the judgment is not warranted by the evidence.

The High Court, in any case tried by the Session Court, except cases tried by Jury, in which, upon a review of the abstract statements or calendar of prisoners punished without reference, it shall appear to it that the judgment pronounced on any prisoner was not warranted by the evidence, may, if it thinks fit, require the Judge of the Court in which the conviction was had, to certify under his hand all or any part of the evidence taken in the case affecting such prisoner, with any observation which the Judge may be desirous of making in explanation of the judgment; and thereupon the High Court may annul such judgment, if such judgment shall appear to it not warranted by the evidence, and shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXVIII.

Revision in jury trials.

The High Court, in any case tried by the jury in Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that there has been error in the decision of the Session Court on a point or points of law, or that a point or points of law should be considered by the High Court, may call for the record, together with a report of the Session Judge's direction to the jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right. The High Court shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXIX.

In cases of sentence by Session Judge, which ought to have been referred.

The High Court, in any case tried in the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the case is one which ought to have been referred for the judgment and sentence of the High Court, may, if it think fit, annul the sentence passed by the Session Court, and require the Session Judge to refer the case, and thereupon the High Court shall pass such judgment and sentence as to the said High Court shall seem right.

CCCXXX.

General power of revision by the High Court.

The High Court may, whenever it thinks fit, call for the whole record of any criminal trial in any Criminal Court within its jurisdiction, and pass thereon such orders as it thinks fit, but not so as to enhances the punishment awarded, or punish any person acquitted in the Court which tried the case; provided that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from determining any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CHAPTER XXVI.

Appeals.

CCCXXXI.

No appeal in cases of acquittal.

There shall be no appeal from a judgment of acquittal passed by any Criminal Court.

CCCXXXII.

Appeal in cases of conviction.

An appeal shall lie in all cases of conviction by the magistrates in the mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, and by the magistrates of Madras [*Bombay*], to the High Court.

CCCXXXIII.

Proceeding in appeals.

Any persson convicted by a judgment of any of the Criminal Courts of original jurisdiction mentioned in the last preceding article, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the record of conviction, and confirm, or amend, or reverse the finding and sentence of the lower Court, but not so as to enhance the punishment awarded; provided, that if the party appealing be in gaol, he shall be at liberty to present his petition of appeal to the magistrate in charge of the same, who shall thereupon forward it to the proper appellate authority; provided also, that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CCCXXXIV.

Court of Appeal may direct further inquiry, &c.

In any case appealed as above, except a case tried by jury, it shall be open to the appellant to move the Appellate Court for further inquiry; and it shall be competent to the Court upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case. The Appellate Court shall at the same time direct whether the lower Court shall pass a fresh sentence in the case, or certify the result of the further inquiry and the additional evidence to the Appellate Court.

CCCXXXV.

Court of Appeal, how to proceed in a case of conviction by an incompetent Court.

When a magistrate or Judge of a Subordinate Criminal Court has convicted a person of an offence not triable by such magistrate or judge, it shall be competent to the Court of Appellate Jurisdiction to annul the conviction and sentence of the lower Court, and to direct the trial of the case by a Court of competent jurisdiction.

CCCXXXVI.

Appeals from orders in proceedings other than trials.

An appeal shall lie from all orders in proceedings other than criminal trials, passed by the magistrates in the mofussil and by the judges of the Subordinate Criminal Courts, to the Session Court; and by the magistrates of Madras [*Bombay*] to the High Court; and it shall be competent to the Courts of Appellate Jurisdiction to pass upon such appeals such orders as they shall deem just and proper.

CCCXXXVII.

Period for presenting petition of appeal.

The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court within thirty days, calculated in the same manner.

CCCXXXVIII.

Result when Appellate Court is equally divided.

Where the Appellate Court consists of more than one Judge, if there should be a difference of opinion among the Judges, and the Court be equally divided, the judgment of the lower Court shall be affirmed.

CCCXXXIX.

Finality of orders in appeal.

Except as provided in Article CCCXXX., the sentences passed by the Appellate Court upon criminal appeals shall be final.

CCCXL.

Powers of Session Judge and magistrate to regulate the proceedings of subordinate Courts.

It shall be at all times lawful for a Session Judge and for a magistrate, or other officer exercising the powers of a magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the High Court to alter any sentence of any subordinate Court except upon appeal by parties concerned duly made according to the foregoing provisions.

CCCXLI.

Power of Session Court to direct bail.

The Session Court shall have a discretionary power of directing that any defendant shall be admitted to bail before a magistrate or Subordinate Criminal Court, or that the bail required by a magistrate or Subordinate Criminal Court be reduced; and also of directing that a party not in custody be admitted to bail on his surrendering to a warrant.

CCCXLII.

Power of High Court to direct bail.

The High Court shall have the like discretionary power in regard to any defendant, or any party, charged with an offence before any Criminal Court.

SCHEDULE A.

Explanatory Notes.—1st.—The entries in the 2d and 5th Columns of the Schedule, headed "Offence" and "Penalty," are not intended as definitions of the offences and penalties described in the several corresponding clauses of the Penal Code, or even as abstracts of those clauses, but merely as references to the subject of the clause of the Code, the Number of which is given in the 1st Column.

2d.—The Term "Bailable or not," in Column 3., is to be taken in connexion with the provisions of Articles CXLIV. and CXLV. of the Code of Criminal Procedure.

3d.—No offence is triable by a Court inferior to the Court specifically mentioned in Column 4. as competent to try such offence; but offences are triable by Courts superior to the Court so mentioned.

4th.—The entries in the last Column show when any offence entered in Column 2. admits of cumulative punishment, and the number of the clause expressly providing for such punishment. The circumstances under which cumulative punishment may be inflicted will be ascertained on reference to the clauses themselves.

CHAPTER IV.—OF ABETMENT.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
88	Previous abetment of any offence by instigation, if the offence is committed in consequence.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	The punishment of the offence - -	Cumulative, Clause 89.
90	Previous abetment of any offence punishable with imprisonment, by instigation, with actual delivery of a bribe.	Idem -	Idem - - -	Imprisonment to ¼ of the longest term for that offence, or fine as for that offence, or both.	
91	Previous abetment of any offence punishable with imprisonment, by instigation, with threat of injury.	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 92.
93	Previous abetment by a person present instigating another to persist in the commission of an offence punishable with rigorous imprisonment for one year and upwards.	Idem -	Idem - - -	Imprisonment of either description, i. e. rigorous or simple, to ¼ of the longest term for that offence, or fine, or both.	
94	Previous abetment by instigating the public, or more than 10 persons, to the commission of any offence.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
95	Previous abetment of an offence by conspiracy, if the offence is committed in consequence.	Idem -	Idem - - - -	See Clause 88.	
96	Previous abetment by conspiracy of any offence punishable with imprisonment, if any act or illegal omission takes place in consequence in order to the offence.	Idem -	Idem - - - -	See Clause 90.	

CHAPTER IV.—Of Abetment—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty	6. When admitting of cumulative Punishment.
97	Previous abetment by any act or illegal omission intended to aid the commission of an offence, if the offence is committed.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	See Clause 88.	
98	When in an attempt to commit an offence, or in the commission, or in consequence of the commission of an offence, a different offence is committed which was likely to be committed.	Bailable if both offences are bailable.	By the Court by which the graver offence is triable.	The previous abettor of the first offence liable to the punishment of the last-mentioned offence.	Cumulative, Same clause.
99	When in consequence of previous abetment an offence is committed, which would be a different offence, but for some misconception of the doer from which the abettor is free, or but for some intention, &c. of the doer unknown to the abettor.	According as the offence contemplated by the abettor is bailable or not.	By the superior Court by which either the offence committed or abetted is triable.	The abettor liable to the same punishment as if no such misconception, &c. existed.	
100	When anything is done in consequence of previous abetment which would be a certain offence, but for the youth, &c. of the doer, or for some misconception on his part from which the abettor is free.	According as the offence to which the contemplated act, if committed without such exceptional circumstances, would have amounted, is bailable or not.	By the Court by which the contemplated act when an offence is triable.	See Clause 88.	
101	A public servant concealing by any act or illegal omission a design to commit any offence which it is his duty to prevent, if that offence is committed.	See 96 -	See 96 - - -	Imprisonment of either description to ½ of the longest term of imprisonment for that offence, or fine, or both.	
102	Concealing by any act or illegal omission a design to commit any offence punishable with rigorous imprisonment for one year or upwards, if the offence is committed.	Idem -	Idem - - -	See Clause 93.	
105	Subsequent abetment by intentionally omitting to give information of an offence committed, as required by law.	Bailable -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	

106	Subsequent abetment of any offence punishable with rigorous imprisonment for one year or upwards, by causing marks of the commission of that offence to disappear.	Idem -	By the Court by which the offence abetted is triable.	Imprisonment of either description to $\frac{1}{14}$ of the longest term for that offence, or fine, or both.	
107	Subsequent abetment of an offence punishable with imprisonment for 7 years or upwards by harbouring the offender to screen him from punishment. *Exception.*—Not to extend to harbour given by relations specified.	Idem -	Magistrate - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
108	Subsequent abetment by assisting the offender to retain or dispose of property fraudulently acquired.	Idem -	See 106 - - -	Imprisonment of either description to 1 year, or fine, or both.	

CHAPTER V.—OFFENCES AGAINST THE STATE.

109	Waging or attempting to wage war, or previously abetting the waging of war against the Government by instigation, conspiracy, or aid.	Not bailable -	High Court or Session Court	Death, or Transportation for life, or imprisonment of either description for life, and forfeiture of all property.	
110	Previous abetment of the last offence by concealing a design to commit it.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
111	Assaulting, &c. the Governor General of India, or the Governor, or Deputy Governor, or a Member of Council of any Presidency, to compel or restrain the exercise of his lawful powers, or attempting such offence.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	Cumulative, Clause 112.
113	Attempting to excite disaffection to the Government.	Bailable -	Idem - - -	Banishment for life, or for any term, from the Company's Territories, to which fine may be added, or simple imprisonment to 3 years, to which fine may be added, or fine simply.	
114	Waging war, &c. against any Asiatic power in alliance with the Government.	Not bailable -	Idem - - -	Banishment, or imprisonment of either description to 3 years, to which fine may be added, or fine simply.	
115	Making preparation within the Company's Territories to commit, or to take refuge after committing depredations on the territories of any power at peace with the Government.	Idem -	Idem - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine and forfeiture of specific property.	

CHAPTER VI.—OFFENCES RELATING TO THE ARMY AND NAVY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
116	Previously abetting the commission of Mutiny by a Soldier or Sailor of the King or of the East India Company.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
117	Previous abetment of Mutiny by such a Soldier or Sailor, when Mutiny is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment of either description for life, or a term not less than 3 years; also liable to fine.	
118	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
119	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer, if the assault is committed.	Idem - -	Idem - - - -	See Clause 116.	
120	Previous abetment of the desertion of such a Soldier or Sailor.	Bailable -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
121	Previous abetment of the desertion of such a Soldier or Sailor, if desertion is committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
122	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy.	Not bailable -	Idem - - -	See Clause 116.	
123	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy, if such desertion is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment which may extend to life; also liable to fine.	
124	Subsequent abetment by harbouring such a Soldier or Sailor who has deserted. *Exception.*—Not extended to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
125	Previous abetment of a breach of Military or Naval discipline by such a Soldier or Sailor committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
126	Any person wearing any garb or carrying any token used by a Soldier in the service of the King or of the East India Company, with the intention that it may be believed that he is such a Soldier.	Idem - -	Idem - - -	See Clause 124.	

CHAPTER VII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

129	Rioting—joining or continuing in a riotous assembly.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	Cumulative, Clause 134.
130	Rioting by joining or continuing in a riotous assembly, knowing that such assembly has been commanded to disperse.	Idem - -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	Cumulative, Clause 131.
132	Rioting, being armed with any weapon - -	Idem - -	Idem - - - -	Idem.	
133	If murder be committed in a riot by one of the rioters, every other rioter shall be punished under this Clause.	Idem - -	High Court or Session Court	Imprisonment of either description to 5 years, or fine, or both.	
135	Intentionally joining or continuing in *any* assembly of 12 or more persons, knowing that it has been commanded to disperse.	Idem -	Magistrate - -	Simple imprisonment to 1 month, or fine, or both.	
136	Malignantly and wantonly giving provocation, intending to cause rioting, if rioting be committed.	Idem - -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 137.

CHAPTER VIII.—OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS.

138	Being or expecting to be a public servant, and accepting for himself or for another any gratification as a motive for doing or forbearing to do any official act, favoring or disfavoring any party, &c.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
139	Accepting any gratification as a motive for inducing by personal influence any public servant to do or forbear to do any official act, &c. &c.	Idem - -	High Court or Session Court	Simple imprisonment to 6 months, or fine, or both.	
140	A public servant abetting, previously or subsequently, the offence in the last Clause with reference to himself.	Idem - -	Idem - - -	Simple imprisonment to 3 years, or fine, or both.	If any person, in doing anything whereby he commits an offence under any clause in this Chapter, also commits an offence under any clause con-
141	A Judge accepting a gift from a plaintiff or defendant in any proceeding in his Court.	Idem - -	Idem - - -	Simple imprisonment to 2 years, or fine, or both.	
142	A Judge pronouncing a decision which he knows to be unjust.	Idem - -	Idem - - -	Idem.	
143	A Judge for any purpose of favour or disfavor to any party disobeying the Law of Procedure.	Idem - -	Idem - - - -	Simple imprisonment to 1 year, or fine, or both.	

CHAPTER VIII.—Of the Abuse of the Powers of Public Servants—*continued.*

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
144	Any Officer authorized to commit to confinement, or keep in confinement, knowingly committing or keeping any person unjustly.	Bailable -	High Court or Session Court	See Clause 141.	tained in any other Chapter of the Penal Code, the punishment shall be cumulative. Clause 151.
145	A public servant disobeying the law for his guidance, intending to cause injury to any person or to save any person from legal punishment.	Idem - -	See 138 - -	See Clause 143.	
146	A public servant charged with the preparation of any document, framing it incorrectly, intending to cause injury to any person, &c.	Idem - -	Idem - - -	See Clause 138.	
147	A public servant bound not to engage in trade engaging in trade.	Idem - -	Idem - - -	Simple imprisonment to 3 months, or fine, or both.	
148	A public servant bound not to purchase or bid for certain property purchasing or bidding for the same.	Idem - -	Idem - -	See Clause 147.	
149	A public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.	Idem - -	Idem - - -	Fine to 3 months' Salary; or to thrice the amount of legal fees received by him in one month, or, if paid in land, to ¼th of the annual value of such land.	
150	Wearing the garb, &c. of a public servant in order to pass off as such.	Idem - -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	

CHAPTER IX.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

152	Absconding to avoid being served with a summons or notice.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
153	Preventing the service or the affixing of any summons, or notices, or the removal of it when it has been affixed; or preventing a proclamation.	Idem - -	Idem - - -	Idem - - - - - -	Cumulative, Clause 154.
155	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Idem - -	Idem - - -	Idem.	

156	Intentionally omitting to produce or deliver up any document, being legally bound to produce or deliver up the same.	Idem - -	Idem - - -	Idem.	
157	Intentionally omitting to give any notice, or furnish information on any subject as required by law.	Idem - -	Idem - - -	Idem.	
158	Knowingly furnishing false information to a public servant.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
159	Refusing to take an oath, &c. to state the truth -	Idem - -	Idem -	Imprisonment of either description to 6 months, or fine, or both.	
160	Being on oath to state the truth, refusing to answer questions.	Idem - -	Idem - - -	Idem.	
161	Refusing to sign a statement made to a public servant when legally required to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
162	Knowingly stating to a public servant on oath as true that which is false.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
163	Giving false information to a public servant in order to cause him to use his lawful power to the loss or annoyance of any person.	Idem - -	Idem - - -	See Clause 158.	
164	Preventing or attempting to prevent any public servant empowered to enter or remain in any place, or make any search, or examine anything, or put any mark upon anything, from exercising such power, or causing annoyance to him in the exercise of it.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine of Rupees 500, or both.	Cumulative, Clause 165.
166	Resisting the taking of any property by the lawful authority of a public servant.	Idem - -	Idem - - -	See Clause 159 - - -	Cumulative, Clause 167.
168	Obstructing a sale held under lawful authority -	Idem - -	Idem - - -	See Clause 152 - - -	Cumulative, Clause 169.
170	Bidding for property at a lawfully authorized sale on account of a person under a legal incapacity to purchase it, or bidding without intending to perform the obligations incurred thereby.	Idem - -	Idem - - -	Imprisonment of either description to 1 month, or fine, or both.	
171	Any person resisting the lawful taking into custody of himself or of any other.	Idem - -	Idem - - -	See Clause 159 - - - -	Cumulative, Clause 172.
173	Rescuing or attempting to rescue any person from lawful custody.	Idem - -	Idem - -	See Clause 59 - - - -	Cumulative, Clause 174.
175	Escaping from lawful custody, or attempting to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine, or both.	Cumulative, Clause 176.

CHAPTER IX.—Contempts of the lawful Authority of Public Servants—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
177	Harbouring a person to prevent his being taken into lawful custody. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rs. 200, or both.	
178	Harbouring a person escaped from custody - *Exception.*—As in Cl. 177.	Idem -	Idem - - -	Imprisonment of either description to 2 months, or fine to Rs. 500, or both.	
179	Insulting or interrupting a public servant in the discharge of his duty.	Idem -	Idem - - -	See Clause 164 - - - -	Cumulative, Clause 180.
181	Intentionally omitting to give assistance to a public servant as directed by law.	Idem -	Idem - - -	See Clause 177.	
182	Disobeying the local order of a public servant, if such disobedience cause danger to human life, health, or safety, or any obstruction or annoyance to persons lawfully employed, or rioting, or risk of rioting.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 183.
184	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 185.
186	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 187.

CHAPTER X.—OFFENCES AGAINST PUBLIC JUSTICE.

190	Giving or fabricating false evidence - -	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
191	Giving or fabricating false evidence to cause any person to be convicted of a capital offence.	Not bailable -	Idem - - -	To transportation for life or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	
192	Giving or fabricating false evidence to cause any person to be convicted of an offence punishable with imprisonment for more than 7 years.	Idem -	Idem - - - -	The punishment of that offence.	

193	*Removing, concealing, &c.* any property to prevent its being taken as a forfeiture, or in satisfaction of a fine under a sentence, or in execution of a decree.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
194	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Idem -	Idem - - -	Idem.	
195	In a declaration which a Court of Justice is bound to receive as evidence, knowingly stating as true that which is false touching a material point.	Idem -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
196	Fraudulently or for annoyance instituting a civil suit without just grounds.	Idem -	Idem - - -	See Clause 193.	
197	Insulting or interrupting a Court of Justice -	Idem -	Magistrate - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 198.
199	Threatening any person to induce him to refrain from instituting or defending any civil suit, or from taking any legal steps in such a suit, or from giving evidence in any judicial proceeding.	Idem -	Idem - - -	See Clause 195 - - -	Cumulative, Clause 200.
201	Escaping or attempting to escape from custody under a lawful sentence.	Not bailable -	Idem - - -	See Clause 195 - - - -	Cumulative, Clause 202.
203	Returning from transportation not for life -	Idem -	High Court or Session Court	Transportation for life, also liable to fine.	
204	Returning from transportation for a term of years, and banishment for life, under a commuted sentence.	Idem -	Idem - - -	Idem.	
205	Returning from banishment for a term - -	Idem	Idem - - -	Transportation which may extend to 7 years and banishment for life.	
206	Harbouring any person escaped from custody under sentence, or returned from transportation or banishment. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Simple imprisonment to 6 months, or fine to Rupees 1,000, or both.	
207	Having accepted a conditional remission of punishment, and violating the condition.	Not bailable -	High Court or Session Court	Punishment of original sentence, or if part undergone, the residue.	

CHAPTER XI.—OFFENCES RELATING TO THE REVENUE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
209	Smuggling	Bailable	Magistrate	Imprisonment of either description to 3 months, or fine to Rupees 500, added to 5 times the value of the property smuggled, or both.	The punishments provided by this Chapter are independent of any confiscation to which the property, with respect to which the offences defined in this Chapter have been committed, is liable under any law. Clause 229.
210	Receiving smuggled goods knowing them to be smuggled.	Idem	Idem	Idem.	
211	Placing a vessel in a forbidden situation	Idem	Idem	Fine to Rupees 1,000.	
212	Cultivating, collecting, or manufacturing any prohibited article.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 500, or both.	
213	Making or having in possession any implement, material, or receptacle, in order to committing any offence under the last Clause.	Idem	Idem	Idem.	
214	Selling any prohibited article	Idem	Idem	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
215	Having in possession any prohibited article	Idem	Idem	Fine to twice the value of the article.	
216	Omitting to put a mark on any article as required by law.	Idem	Idem	Fine to the value of the article.	
217	Performing any part of the process of counterfeiting a stamp from which the Government derives a revenue.	Idem	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
218	Having in possession any implement, &c. for counterfeiting such stamp.	Idem	Idem	Idem.	
219	Making any implement for counterfeiting such stamp.	Idem	Idem	Idem.	
220	Selling any stamp known to be counterfeit	Idem	Idem	Idem.	
221	Having in possession a stamp, knowing it to be a counterfeit of a Government stamp, intending it for sale.	Idem	Idem	Idem.	
222	Using a counterfeit stamp as genuine	Idm	Magistrate	Imprisonment of either description to 6 months, or fine, or both.	
223	Effacing from a stamp a writing in order that such stamp may be used for a different writing.	Idem	Idem	Imprisonment of either description to 3 months, or fine to an amount equal to Rupees 500, added to 5 times the price of such stamp, or both.	

224	Using for any writing a stamp known to have been before used for a different writing.	Idem -	Idem - - -	Idem.
225	Establishing or maintaining an illegal post, or conveying or delivering letters, &c. by such post.	Idem -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.
226	Being in charge of any letter or packet on board of a vessel, and intentionally omitting to deliver the same as required by law.	Idem -	Idem - - -	Fine.
227	Being in charge of a Ship and refusing to receive on board any letters, &c. as legally required by a public servant.	Idem -	Idem - - -	Fine to Rupees 500.
228	A person having a licence to cultivate, collect, manufacture, import, export, convey, sell, or have in possession any article, acting contrary to the conditions of the licence.	Idem -	Idem - - -	Fine to Rupees 200.

CHAPTER XII.—OFFENCES RELATING TO COIN.

232	Counterfeiting Coin - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.
233	Counterfeiting the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 2 years, also liable to fine.
234	Making a die for counterfeiting Coin - -	Idem -	Idem - - -	See Clause 232.
235	Making a die for counterfeiting the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.
236	Having in possession any implement or material for committing an offence under any of the four last preceding Clauses.	Idem -	Idem - - -	See Clause 232.
237	Previously abetting the counterfeiting of the King's or Company's Coin without the Company's Territories.	Idem -	Idem - - -	See Clause 233.
238	Importing into or exporting from the Company's Territories counterfeit Coin to be passed as genuine.	Idem -	Idem - - -	See Clause 232.
239	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.

CHAPTER XII.—Offences relating to Coin—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
240	Having any counterfeit Coin, known to be such when it came into possession, and delivering, &c. the same to any person with the intention that it shall pass as genuine.	Not bailable -	High Court or Session Court	See Clause 232.	
241	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
242	Delivering, &c. to any person any Coin as genuine, knowing it to be counterfeit.	Idem -	Magistrate - - -	Fines to 10 times the value of the genuine Coin.	
243	Possessing counterfeit Coin, knowing it to be such when it came into possession, intending that it may pass as genuine.	Idem -	High Court or Session Court	See Clause 232.	
244	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
245	A person employed in a Mint intentionally causing by any act or omission any Coins issued therefrom to be of a weight or composition different from that fixed by law.	Idem -	High Court - -	Idem.	
246	Diminishing the weight or altering the composition of any Coin intending that it shall pass as unaltered.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 1 year, minimum 3 months, also liable to fine.	
247	The same as to the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, also liable to fine.	
248	Possessing any implement or material intending to employ the same for committing an offence under any of the three last preceding Clauses.	Idem -	Idem - - -	See Clause 246.	
249	Possessing Coin altered as in Clause 246, having known it to be so altered when it came into possession, and delivering, &c. the same to any person with intention that it may pass as unaltered.	Idem -	Idem - - -	Idem.	
250	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

251	Possessing Coin, known when it came into possession to have been dealt with as in Clause 246, intending to cause the same to be in circulation.	Idem -	Idem - - -	See Clause 246.	
252	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

253	Fraudulently using a false balance - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
254	Fraudulently using a false weight or measure -	Idem -	Idem - - -	Idem.	
255	Having a false balance, weight or measure for fraudulent use.	Idem -	Idem - - - -	Idem.	
256	Making a false balance, weight or measure for fraudulent use.	Idem -	Idem - - -	Idem.	

CHAPTER XIV.—OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, AND CONVENIENCE.

257	Malignantly or wantonly doing any act known to be likely to spread the infection of a dangerous disease.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	
258	Knowingly disobeying any rule of the Quarantine laws.	Idem -	Idem - - -	Idem.	
259	Adulterating food or drink intended for sale so as to make the same noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	
260	Selling any food or drink as wholesome knowing the same to be noxious.	Idem -	Idem - - - -	Idem.	
261	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
262	Offering for sale or issuing from a Dispensary any drug or medical preparation known to have been adulterated.	Idem -	Idem - - - -	Idem.	
263	Knowingly selling or issuing from a Dispensary any drug or medical preparation as a different drug or medical preparation.	Idem -	Idem - - -	Idem.	

CHAPTER XIV.—Offences affecting Public Health, Safety, and Convenience—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
264	Causing the atmosphere in any public way to be noxious or offensive.	Bailable	Magistrate	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
265	Driving or riding on a public way so rashly or negligently as to indicate a want of due regard for human life.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 2,000, or both.	
266	Navigating any vessel so rashly or negligently, &c.	Idem	Idem	Idem.	
267	Conveying for hire any person in a vessel in such a state, or so loaded, as to endanger his life.	Idem	Idem	Idem.	
268	Dealing with any poisonous substance so rashly or negligently as to indicate a want of due regard for human life.	Idem	Idem	Idem.	
269	Dealing with fire or any combustible matter so rashly or negligently, &c.	Idem	Idem	Idem.	
270	So dealing with any explosive substance	Idem	Idem	Idem.	
271	So dealing with any machinery	Idem	Idem	Idem.	
272	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Idem	Idem	Idem.	
273	A person omitting to take order with any animal in his possession so as to guard against danger to human life or of grievous hurt from such animal.	Idem	Idem	Idem.	
274	Causing danger, obstruction, or annoyance in any public way or line of navigation.	Idem	Idem	Fine to Rupees 200.	

CHAPTER XV.—OFFENCES RELATING TO RELIGION AND CASTE.

275	Destroying, damaging, or defiling a place of worship or sacred object with intention to insult the religion of any class of persons.	Bailable	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
276	Causing a disturbance to an assembly engaged in religious worship, and assaulting or threatening any person engaged in such worship.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 277.

278	Disturbing a religious assembly in a place of worship.	Idem -	Idem - - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 279.
280	Trespassing in a place of sepulture, offering indignity to a human corpse, or disturbing a funeral with intention to wound the feelings or to insult the religion of any person.	Idem -	Idem - - - -	See Clause 278 - - -	Cumulative, Clause 281.
282	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Idem -	Idem - -	Idem.	
283	Doing or threatening to do any act with intention to cause it to be believed that some person is thereby rendered an object of divine displeasure, &c. &c.	Idem -	Magistrate - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
284	Committing an assault with intention to cause a person to lose caste, or inducing him to do something ignorantly whereby he will incur loss of caste.	Idem -	Idem - - -	Imprisonment of either description to 6 months, fine to Rupees 2,000, or both.	
285	Intentionally causing the food of a person to be in a state in which he, according to his religion or caste, cannot use it.	Idem -	Idem - - -	Fine to Rupees 50.	
286	If the last offence is repeated after a conviction -	Idem -	Idem - - - -	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	

CHAP. XVI.—ILLEGAL ENTRANCE INTO AND RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY.

287	A subject of the King, not a native of the Company's Territories, omitting on his arrival by Sea in those Territories to report his name, place of destination, and object of pursuit.	Bailable -	Magistrate - - -	Fine to Rupees 1,000.	
288	A subject of the King, not a native of the Company's Territories, entering the said Territories by land without legal authority.	Idem -	Idem - - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
289	A subject of the King, &c. entering or residing in a certain part of the said Territories without the licence required by law.	Idem -	Idem - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
290	Repeating the last offence after conviction -	Idem -	High Court or Session Court	Banishment for life or for any term, or simple imprisonment to 1 year, to which fine may be added.	

CHAPTER XVII.—OFFENCES RELATING TO THE PRESS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
291	Possessing a Printing Press not having made and subscribed the declaration required by law.	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine to Rupees 5,000, or both.	
292	Printing or publishing any book, &c., without the name of the Printer and Publisher and the place of printing and publishing.	Idem -	Idem - - -	Idem.	
293	Printing, &c. any Newspaper, &c. contrary to law	Idem -	Idem - - -	Idem.	

CHAPTER XVIII.—OFFENCES AFFECTING THE HUMAN BODY.

300	Murder - - - -	Not bailable -	High Court or Session Court	Death, or Transportation for life, or rigorous imprisonment for life, also liable to fine.	
301	Manslaughter - - - -	Idem -	Idem - - -	Imprisonment of either description to 14 years, or fine, or both.	
302	Voluntary culpable homicide by consent -	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
303	Voluntary culpable homicide in defence -	Idem -	Idem - - -	See Clause 301.	
304	Causing death by an act or illegal omission so rash or negligent as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 2 years, a fine, or both.	Additional, Clause 305.
306	Previous abetment by aid of Suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Idem -	Idem - - -	See Clause 300.	
307	Previously abetting by aid the commission of Suicide.	Idem -	Idem - - -	See Clause 302.	
308	Doing any act, &c. with such intention, &c. that if death ensued it would be murder, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	

309	Doing any act, &c. with such intention, &c. that if death ensued it would be voluntary culpable homicide, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.
311	Being a Thug - - - -	Idem -	Idem - - -	Transportation for life, or imprisonment of either description for life, also liable to fine.
	Causing Miscarriage.			
312	A woman causing herself to miscarry, or any person causing a woman to miscarry.	Bailable -	High Court or Session Court	See Clause 309.
313	Committing the offence in the last Clause without the woman's consent.	Not bailable -	Idem - - -	The punishment of miscarriage in excess of any punishment incurred by reason of any hurt caused to the woman.
	Of Hurt.			
318	Causing hurt, except as in Clause 325 -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.
319	Causing grievous hurt, except as in Clause 326 -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 10 years, minimum 6 months, also fine.
320	Causing hurt in an attempt to commit murder -	Idem -	Idem - - -	See Clause 308.
321	Causing hurt for the purpose of extortion, &c. -	Idem -	Idem - - -	Rigorous imprisonment maximum 14 years, minimum 1 year, also liable to fine.
322	Causing grievous hurt for the purpose of extortion, &c.	Idem -	Idem - - -	See Clause 308.
323	Causing hurt (except as in Clause 325) by a sharp instrument, or by fire, &c., or by any corrosive or explosive substance, or by any substance deleterious to inhale or swallow, or by means of any animal.	Idem -	Magistrate - - -	See Clause 309.

CHAPTER XVIII.—Offences affecting the Human Body—*continued:* Of Hurt—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable	5. Penalty.	6. When admitting of cumulative Punishment.
324	Causing grievous hurt (except as in Clause 326) by any of the means described in the last Clause.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
325	Causing hurt on grave and sudden provocation, not intending to hurt any other but the person who gave the provocation	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
326	Causing grievous hurt as in last Clause -	Idem -	High Court or Session Court	Imprisonment of either description to 1 year, or fine to Rupees 2,000, or both.	
327	Causing grievous hurt by an act or illegal omission so rash or negligent as to indicate a want of regard for the safety of others.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 328.
329	Any act or illegal omission intended, &c. to cause grievous hurt, the causing of which would be an offence other than that defined in Clause 326, and carrying it to a length at the time contemplated as sufficient to cause grievous hurt.	Not bailable -	Idem - -	Imprisonment of either description to half the term the offender would have been liable to, had he caused the grievous hurt intended, or fine, or both.	
	Wrongful Restraint and Confinement.				
332	Wrongfully restraining any person - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
333	Wrongfully confining any person - -	Idem -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
334	Wrongfully confining for 3 days or more -	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
335	Wrongfully confining for 10 days or more -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, in addition to 3 days for every day of such wrongful confinement, minimum 6 months in addition to 1 day for every day of such wrongful confinement, also liable to fine.	

336	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any term of imprisonment to which the offender may be liable under Clause 335, also liable to fine.	
337	Wrongful confinement for the purpose of extortion, &c.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any imprisonment under either of the last two Clauses, also liable to fine.	
338	While keeping a person in wrongful confinement, omitting to furnish him with anything necessary to prevent danger of death or hurt.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
			Assault.		
342	Assault otherwise than on grave and sudden provocation.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
343	Assault in attempt to commit murder - -	Not bailable -	High Court or Session Court	See Clause 308.	
344	Assault in attempt to commit kidnapping -	Idem -	Idem - - -	Imprisonment of either description, maximum half the term of imprisonment for kidnapping, minimum 6 months, also liable to fine.	
345	Assault in attempt to cause grievous hurt otherwise than on grave and sudden provocation.	Idem	Idem - - -	Imprisonment of either description to $\frac{1}{3}$d the term for grievous hurt, or fine, or both.	
346	Assault on a woman in attempt to commit rape -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
347	Assault on a woman with intent to outrage her modesty.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
348	Assault on a person with intent to dishonour him otherwise than on grave or sudden provocation.	Idem -	Idem - - -	Imprisonment of either description to 2 years, or fine, or both.	
349	Assault on a person in attempt to commit theft on any property he may be wearing or carrying.	Not bailable -	Idem - - -	Idem.	
350	Assault on a person in attempt to wrongfully confine him.	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Assault—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
351	Assault on a person on grave and sudden provocation given by that person.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
352	Making show of assault except on grave and sudden provocation.	Idem -	Idem - - -	Idem.	
			Kidnapping.		
355	Kidnapping - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
356	Kidnapping intending or knowing that murder may be committed in consequence.	Idem -	Idem - - -	See Clause 308.	
357	Kidnapping intending or knowing that the consequence may be grievous hurt or rape, &c.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
358	Being in charge of a vessel and permitting a person to embark on board for a place not within the Company's Territories without a legal order or permit.	Bailable -	Magistrate - -	Simple imprisonment to 1 month for every person so embarked, or fine to Rupees 200 for every person, or both.	
			Rape.		
360	Rape - - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
			Unnatural Offences.		
361	Unnatural offences - - - -	Not bailable -	High Court or Session Court	See Clause 360.	
362	Unnatural offences without consent - -	Idem -	Idem - - -	Imprisonment of either description, maximum for life, minimum 7 years, also liable to fine.	

364	Theft - - - -	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	Rigorous imprisonment to 3 years, or fine, or both.	
365	Theft within any building, tent, or vessel used as a human dwelling, or any building used for the custody of property, in pursuance of a conspiracy in which any person residing or employed within and any person not so residing or employed are engaged.	Idem -	Idem - - -	Rigorous imprisonment, maximum 3 years, minimum 6 months, also liable to fine.	
366	Theft on a letter or packet in possession of an Officer of the Post Office.	Idem -	Idem - - -	Idem.	
367	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Idem -	High Court or Session Court	Rigorous imprisonment, maximum 7 years, minimum 1 year, also liable to fine.	
	Extortion.				
369	Extortion - - - -	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
370	Putting or attempting to put in fear in order to extortion.	Idem -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
371	Extortion by putting a person in fear, for himself or for another, of death or grievous hurt.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	

CHAPTER XIX.—Offences against Property—*continued*: Extortion—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
372	Putting or attempting to put a person in fear, for himself or for another, of death or grievous hurt, in order to extortion.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
373	Extortion by putting a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust.	Idem -	Idem - - -	See Clause 371.	
374	Putting or attempting to put a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust in order to extortion.	Idem -	Idem - - -	See Clause 372.	
	Robbery and Dacoity.				
377	Robbery - - - - -	Not bailable -	High Court or Session Court	Rigorous imprisonment, maximum 14 years, minimum 2 years, also fine.	Cumulative, Clause 382.
378	Attempt to commit robbery - - -	Idem -	Idem - - -	Rigorous imprisonment, maximum 7 years, minimum 1 year, also fine.	
379	Dacoity - - - - - -	Idem -	Idem - -	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also fine.	
380	Murder in dacoity, where 6 or more engaged in committing it.	Idem -	Idem - - -	Death, or transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also fine.	
381	Being one of 6 or more persons assembled for dacoity.	Idem -	Idem - - -	See Clause 378.	
	Criminal Misappropriation of Property not in Possession.				
384	Criminal misappropriation of property not in possession.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 2 years, or fine, or both.	

385	*Criminal misappropriation of property not in possession, knowing that it was in possession of a deceased person at his death, and has not since been in the possession of any person legally entitled to it.*	Idem -	Idem - - -	*Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.*	
			Criminal Breach of Trust.		
387	Criminal breach of trust - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 3 years, or fine, or both.	
388	Criminal breach of trust by a public servant in the Post Office Department by misappropriating letters, &c. entrusted to him.	Idem -	Idem - - -	See Clause 385.	
			Receiving Stolen Property.		
390	Fraudulently receiving stolen property knowing it to be stolen.	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	See Clause 387.	
391	Fraudulently receiving stolen property knowing it was obtained by dacoity.	Idem -	High Court or Session Court	See Clause 379.	
			Cheating.		
394	Cheating - - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
395	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
396	Cheating by personation - - -	Idem -	Idem - - -	Idem.	
397	Attempting to cheat by personation - -	Idem -	Idem - - - -	See Clause 394.	

CHAPTER XIX.—Offences against Property—*continued*: Cheating—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
			Fraudulent Insolvency.		
398	An Insolvent Trader fraudulently removing or concealing or delivering or transferring to any party any property to prevent the distribution of that property among his creditors.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
			Mischief:		
400	Mischief - - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Fine to 10 times the wrongful loss thereby caused.	
401	Mischief, having taken precaution not to be detected.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
402	Mischief thereby causing wrongful loss to Rupees 5 or upwards.	Idem -	Idem - - - -	Idem.	
403	Mischief thereby causing wrongful loss to Rupees 100 or upwards.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
404	Mischief intending to enhance the value of any article, or to affect the event of any competition for the gain of any person.	Idem -	Idem - - - -	Idem.	
405	Mischief with intent to insult or annoy the person to whom wrongful loss is intended.	Idem -	Idem - - -	Idem.	
406	Mischief by killing, wounding, or poisoning any animal to the value of Rupees 10.	Idem -	Idem - - - -	Imprisonment of either description to 3 years, or fine, or both.	
407	Mischief on any channel or reservoir of water with intent, &c. to cause diminution of cultivation of agricultural produce, or a failing of the supply of water required for food, drink, &c., or for carrying on any manufacture.	Idem -	Idem - - -	Idem.	
408	Mischief on any road, bridge, or navigable channel with intent, &c. to render it less safe or easy to travel.	Idem -	Idem - - - -	Idem.	

409	Mischief with intent, &c. to cause an inundation attended with loss to Rupees 100 or upwards.	Idem -	Idem - - -	Idem.	
410	Mischief on any lighthouse or buoy with intent, &c. to render the same less useful.	Idem -	Idem - - - -	Idem.	
411	Mischief on any landmark with intent, &c. to render it less useful.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
412	Mischief by fire with intent, &c. to destroy property not within a building to the value of Rupees 100 or upwards.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also liable to fine.	
413	Mischief by fire with intent, &c. to destroy any building used as a dwelling or for the custody of property.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
414	Mischief by fire with intent, &c. that buildings used as dwellings to the number of 5 may be consumed.	Idem -	Idem - - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also liable to fine.	
415	Mischief on any decked vessel with intent, &c. to destroy it or render it unsafe.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
416	Mischief, having made preparation for causing death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint, while committing or attempt to commit or retiring after committing such mischief.	Idem -	Idem - - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 417.
	Criminal Trespass.				
425	Criminal Trespass - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
426	House Trespass - - - -	Not bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	Cumulative, Clause 427.
428	House Trespass in order to any offence punishable with death or transportation for life.	Idem -	High Court or Session Court	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also liable to fine.	
429	House Trespass in order to any offence punishable with imprisonment.	Idem -	The High Court or Session Court, if the offence intended is triable by those Courts exclusively; otherwise by the Magistrate.	Imprisonment of either description to 1 year, added to $\frac{1}{3}$d of the longest term for the offence intended, or fine, or both.	

CHAPTER XIX.—Offences against Property—*continued*: Criminal Trespass—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
430	House Trespass, having made preparation for causing hurt, assault, &c.	Not bailable -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
	Lurking house trespass or house breaking -	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 432.
433	Lurking house trespass or house breaking in order to committing an offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 2 years, added to ½ the longest term of imprisonment for the offence intended, and not less than ½ the shortest term, also liable to fine.	
434	Lurking house trespass or house breaking, having made preparation for causing hurt or assault, &c.	Idem -	Magistrate - - -	Imprisonment of either description, maximum 3 years, minimum 3 months, also liable to fine.	
435	Lurking house trespass, &c. by night - -	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	Cumulative, Clause 436.
437	Lurking house trespass, &c. by night, in order to any offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 3 years, added to ⅔ds of the longest term of imprisonment for the offence intended and not less than the shortest time, also liable to fine.	
438	Lurking house trespass, &c. by night having made preparation for causing hurt, &c.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also fine.	
439	Criminal trespass by opening any closed receptacle for property so as to damage it, or by opening any lock.	Idem -	Magistrate - -	See Clause 430.	
440	Being entrusted by law or under a contract with any closed receptacle for property, committing criminal trespass by opening the same with a fraudulent intention by any means by which it is damaged, or by opening any lock.	Idem -	Idem - - -	See Clause 435.	

443	Committing Forgery, or using a forged document as genuine.	Not bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
444	Forging or falsifying a valuable security, or using the forged document as genuine.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
445	Forging a document, or using a forged document as genuine for the purpose of cheating.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
446	Forging a document, or using a forged document as genuine, to harm the reputation of any party.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
447	Making any apparatus or material for engraving, or any seal, for the purpose of committing forgery.	Idem -	Idem - - -	See Clause 444.	
448	Possessing any plate, or material, or implement for engraving, or any seal, for the purpose of forgery.	Idem -	Idem - -	Idem.	
449	Possessing any forged document purporting to be a valuable security intending that it may be used as genuine.	Idem -	Idem - - -	Idem.	
450	Possessing anything not a document, but which has been marked by forgery, intending that it may be made a document purporting to be a valuable security and may be used as genuine.	Idem -	Idem - -	Idem.	
451	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will.	Idem -	Idem - - -	Idem.	
452	Fraudulently destroying or defacing or secreting a valuable security.	Idem -	Idem - - -	See Clause 446.	
453	A public servant in the Post Office Department opening any letter, &c. containing any document, without legal authority.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
454	Any person opening a fastened letter, &c. containing a document, knowing that it does not belong to him, &c.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXI.—OFFENCES RELATING TO PROPERTY MARKS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
456	Making any counterfeit property mark, or using such as genuine.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
457	Counterfeiting any property mark affixed by the lawful authority of any public servant, or using such counterfeit as genuine to cause injury to some party.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
458	Making or using any counterfeit property mark for the purpose of cheating.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
459	Putting any property mark on any property, or using the same for the purpose of cheating.	Idem -	Idem - - -	See Clause 456.	

CHAPTER XXII.—ILLEGAL PURSUIT OF LEGAL RIGHTS.

460	Taking property from a person, not fraudulently but to satisfy a just debt, under such circumstances that if the intention were fraudulent the act would be theft or robbery.	Bailable -	High Court or Session Court	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 462.
461	Taking property as in the last Clause, and *keeping* the same *fraudulently*.	Idem -	Idem - - -	The punishment to which the offender would have been liable had the taking been fraudulent.	

CHAPTER XXIII.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

463	Being bound by contract to convey or conduct any person or property from one place to another, and illegally omitting to do so.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
464	A Seaman bound to serve in a merchant vessel leaving it, or absenting himself from it, or disobeying the order of any officer thereof.	Idem -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 100, or both.	
465	Being bound to attend on or supply the want of a person who is helpless from youth, unsoundness of mind, or disease, and illegally omitting to do so.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXIV.—OFFENCES RELATING TO MARRIAGE.

466	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also fine.	
467	A woman committing the same offence with a man.	Bailable -	Idem - - -	Simple imprisonment to 1 year, or fine, or both.	
468	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	

CHAPTER XXV.—DEFAMATION.

479	Defamation - - - -	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine, or both.	
480	Being the possessor of machinery by which defamatory matter has been printed or engraved at the time the printing or engraving was done.	Idem -	Idem - - -	Idem.	
481	Being the first seller of the printed or engraved substance by which defamation is committed.	Idem -	Idem - - -	Idem.	

CHAPTER XXVI.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

483	Criminal intimidation - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
484	Criminal intimidation, having taken precaution to conceal whence the threat comes.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
485	Uttering any word, or making any sound or gesture, or exhibiting any object, to insult any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
486	Uttering any word, &c. to insult the modesty of any woman.	Idem -	Magistrate - -	See Clause 483.	
487	Uttering any word, &c. malignantly and wantonly to annoy any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
488	Appearing in a public place, &c. in a state of intoxication, and causing annoyance to any person.	Idem -	Idem - - -	Simple imprisonment to 24 hours, or fine to Rupees 10, or both.	

We humbly submit this our Fourth Report to Your Majesty's Royal Consideration.

JOHN ROMILLY. (L.S.)

*

EDWARD RYAN. (L.S.)

C. H. CAMERON. (L.S.)

† JOHN M. MACLEOD. (L.S.)

T. F. ELLIS. (L.S.)

ROBERT LOWE. (L.S.)

Dated the 20th day of May 1856.

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* See Letter from the Right Honourable the Lord Chief Justice of the Common Pleas, appended to this Report.

† See Minute by Mr. Macleod, appended to this Report.

LETTER from the Right Honourable Sir JOHN JERVIS, Lord Chief Justice of the Common Pleas.

47, Eaton Square,
22 May 1856.

My dear Sir,

I DECLINE to sign the Third and Fourth Reports of the Indian Law Commissioners. I consented to act as a Commissioner upon the express understanding that we were to endeavour to frame a Code of Procedure for all India, and with this understanding applied myself diligently to the subject, and, with the aid of the other Members of the Commission, succeeded in framing a Code which I believe is well calculated to meet the exigencies of the case, and which is certainly infinitely better than any that has been proposed by the authorities in India. If I had supposed that the Commission would be used to postpone legislation, and that the subject would ultimately be shelved by a reference to the Indian Government, I should not have consented to act; and considering that a slight has been cast upon the Commissioners by the course which has been taken, I decline to take any further part in the proceedings of the Commission.

I am yours, faithfully,
JOHN JERVIS.

N. B. Baillie, Esq.
Secretary, &c.

MINUTE by Mr. MACLEOD.

I AM under the necessity of dissenting from the recommendation of the majority of the Commissioners, that the Judges to be appointed by the Governor-General in Council to the bench of the proposed High Court at Madras shall be selected from the five stated classes of persons. My reasons are the same which, in a Minute appended to our First Report, I stated for objecting to the scheme of the majority for the constitution of a High Court at Calcutta.

I dissent also now, as I did in respect of the High Court proposed to be established at Calcutta, from the recommendation to enact a rule empowering the Chief Justice to determine from time to time "what and how many Judges of "the Court, whether with or without the Chief Justice, shall from time to time "constitute Courts of Appeal, and what and how many Judges, whether with "or without the Chief Justice, shall constitute Courts of Original Jurisdiction." Instead of giving this great power entirely to the Chief Justice, I think that it would be better to give it in the first instance to the collective body of the Judges, and ultimately to the Governor in Council, in accordance with the suggestion which I ventured to offer with reference to the High Court at Calcutta.

There is one part of our scheme of lower Criminal Judicatories which on mature consideration appears to me so objectionable that I feel it my duty to dissent from it, although I did not do so when I signed our First Report. I allude to the proposed rules determining who shall be the Judges of the proposed two classes of Subordinate Criminal Courts.

These rules are:—"First Assistants to the Magistrate and Principal Sudder "Ameens shall be Judges of Subordinate Criminal Courts of the First Class. "Second Assistants to the Magistrates and Moonsiffs shall be Judges of the "Subordinate Criminal Courts of the Second Class."

I think that it would be much better to make the Principal Sudder Ameens and the Moonsiffs respectively the only Judges of the two classes of Criminal Courts under the Courts of the Magistrate. Those two classes of Courts might then be better designated as the Criminal Court of the Principal Sudder Ameen and the Criminal Court of the Moonsiff. The Assistants to the Magistrates, I think, ought not to be by law constituted Judges of any Courts separate from the Court of the Magistrate. Whatever powers of Criminal Judicature they are employed to exercise they should exercise as Assistants to the Magistrate; and it should rest with the Government, or with the Magistrate if the Government delegate the duty to him, to determine from time to time, with respect to every Assistant, how much of the powers of the Magistrate he shall be authorized to exercise.

JOHN M. MACLEOD.

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